



**Arab American University
Faculty of Graduate Studies**

**The Right to Access Information in Light of
The Palestinian Draft-Law, Comparative Legislation,
and International Standards**

By
Wiam Muhareb Mohammad Shalhout

Supervisor
Dr. Isam Abdeen

**This study has been submitted in fulfillment of the
requirements for the Master's degree in
International Law and Diplomacy
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Thesis Approval

The Right to Access Information in Light of The Palestinian Draft-Law, Comparative Legislation and International Standards

By

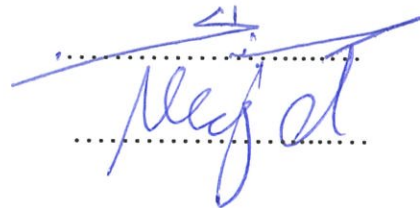
Wiam Muhareb Mohammad Shalhout

This thesis was defended Successfully on 24/6/2023 and approved by:

Committee Members

1. Dr. Isam Abdeen
2. Dr. Sania Al-Husseini
3. Dr. Majd Owdeh

Signature



Declaration

I, the undersigned, Wiam Muhareb Mohammad Shalhout, holder of ID number 403813322, acknowledge that I have been accepted into the Program for the Master's degree in International Law and Diplomacy.

Hereby, I declare that this thesis represents my own work, and has not been previously included in a thesis or dissertation submitted to this or any other institution for a degree, diploma or other qualifications.

Name: Wiam Muhareb Mohammad Shalhout

Signature: 

Date: 2023/8/26

Student ID: 202012885

Thanks, and Appreciation

Prophet Mohammad says: "Whoever does not thank people, does not thank God"

I begin by thanking and praising Allah, the Almighty, for His countless blessings. I would not have reached this academic degree without His satisfaction and the satisfaction of my parents.

I would like to express my gratitude and appreciation to my beloved mother, my dear wife, my siblings, and relatives who have been my first support, and to the soul of my father who left us many years ago, but his spirit still supports and encourages me.

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Abstract

This thesis has dealt with the right to access information, in a way that includes the text of the Palestinian draft law regulating the right to access information, as well as what is enshrined in comparative legislation and international standards in this context, through a major problem on which the study relied, as this problem is related to the study of The legal regulation of the right to access information, including all components mentioned in the title of the study, specifically the Palestinian draft law, comparative legislation and international standards.

As for the importance of the study, it was represented in what the study expresses of theoretical importance, so that the latter is related to the consideration of the right to access information as the rights related to the right to freedom of opinion and expression, which are guaranteed in contemporary constitutions, and within the scope of the Palestinian Basic Law, specifically the chapter on rights and freedoms Therefore, guaranteeing and consecrating the right to access information necessarily means protecting the political system, with all its components, including rights and freedoms. As for the practical importance of the study, it is represented in emphasizing that devoting the right to access information leads to achieving the objectives of that right, including the embodiment of good governance, open government, and the achievement of popular oversight, Promoting human rights and public freedoms within the framework of the state, in addition to strengthening measures to prevent and combat corruption. In terms of the current importance of the study, it gains its importance from the existence of a draft law on the right to access information in the Palestinian reality, which needs to be studied to explain its advantages and disadvantages, in order to endorse it in a manner consistent with international standards.

The researcher relied on the comparative analytical approach, as he adopted the methodology of dividing the study into two chapters. In the first chapter, he dealt with the definition of the right to access information in local and comparative legislation, jurisprudence, and international standards, in addition to addressing the guarantees and obstacles to the right to obtain information. As for the second chapter, the procedures and restrictions of the right to access information were examined, including the means of the right to obtain information, as well as the exceptions to that right.

The researcher reached a set of results and recommendations, which could be useful in terms of practical and applied reality. Between activating the right to access information and considerations of public order, privacy and other relevant considerations, as well as emphasizing the joints and axes of the law on the right to access information, so that this law does not include an unjustified restriction of the right, and ensuring the independence of the party responsible for applying the law and providing information. Likewise, exceptions should not be made the rule. Rather, the right should not be emptied of its content through unjustified and arbitrary restrictions. Also, stressing the need for a serious legislative policy to regulate the right to obtain information, in terms of the substantive and procedural framework of the law regulating the right, as well as with regard to the tools for activating the aforementioned law in terms of control, the possibility of grievance and appeal, as well as the system of crimes and penalties emanating from the law.

Contents

Thesis Approval.....	I
Thanks and Appreciation.....	III
Abstract.....	IV
Study Problem	3
Importance of The Study	3
Theoretical Importance:.....	3
The Practical Importance:.....	3
Study Questions.....	4
Objectives of the Study	4
Literature Review	5
Palestinian Studies:.....	5
Arabic Studies:	5
Methodology of the Study	6
Study Plan.....	7
Chapter One: The Nature of the Right to Access Information.....	8
Section One: Definition of the Right to Access Information in Local and Comparative Legislation, Legal Jurisprudence, and International Standards.....	10
Subsection one: The Right to Access Information in Local and Comparative Legislation	11
<i>Subsection Two: The Right to Access Information in Legal Jurisprudence.....</i>	<i>26</i>
<i>Subsection Three: The Right to Access Information in International Conventions and Standards.....</i>	<i>41</i>
<i>Section Two: Guarantees and Impediments to the Right to Information</i>	<i>48</i>
<i>Subsection One: Guarantees of the Right to Obtain Information</i>	<i>49</i>
<i>Subsection Two: Obstacles to the Right to Access Information</i>	<i>75</i>
Chapter Two: Procedures and Restrictions on the Right to Access Information.....	104
<i>Section One: Means of Accessing Information</i>	<i>104</i>
<i>Subsection One: Requesting to Access Information</i>	<i>105</i>
<i>Subsection Two: Proactive Disclosure of Information</i>	<i>126</i>
<i>Section Two: Exceptions of the Right to Access Information.....</i>	<i>147</i>
<i>Subsection One: Exceptions Provided for the Public Interest</i>	<i>148</i>
<i>Subsection Two: Exceptions Allowed for Private Interests.....</i>	<i>176</i>

<i>Section Three: the Utmost Importance of the Right to Access Information in the Palestinian Context Specifically</i>	197
Recommendations	201
Sources & References.....	203

Introduction

Rights and freedoms are the basis upon which the level of civilization of religious states is measured. Therefore, the legislation of countries, including Arab countries, seeks to establish these rights constitutionally and within their internal legislation in line with international covenants, declarations, and agreements on human rights. Especially since Palestine has joined many international agreements, which entail entitlements. This right is considered important and exceptional in light of those international standards.

In this regard, comparative Arab legislation addresses the right to access and obtain information through official sources, which is considered one of the forms of freedom of opinion and expression in all aspects of political, economic, social, and cultural life. It is a fundamental right of the third generation of rights.

When countries address the right to access information, the terms used in Arab countries have varied as titles for this legislation. Some have used the term "right to access information," while others have used the term "right to obtain information" or "freedom of information." These terms regulate the right to access information from entities that possess it.

On a historical level, Sweden was the first country to regulate the right to access information by including it in its Freedom of the Press Act in 1766. International efforts culminated in the adoption of Resolution 59/1 by the United Nations General Assembly in 1946, which explicitly and unequivocally recognized this right as a fundamental human right and a yardstick by which all freedoms enshrined by the United Nations are measured.

As a result, the right to access information has been internationally regulated through covenants and declarations such as the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights, as well as on Economic, Social,

and Cultural Rights, all of which fall under the umbrella of freedom of opinion and expression.

The Universal Declaration of Human Rights of 1948 states in Article 19 that everyone has the right to freedom of opinion and expression, which includes the right to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.

On the Arab level, the Hashemite Kingdom of Jordan was the first Arab country to recognize the right to access information and regulate it through a special law known as the Law on Guaranteeing the Right to Access Information, dated June 17, 2007.

In the Palestinian context, the legislative experience has been long and difficult. In Palestine, this right gained utmost significance in two projects: the Access to Information Law project in 2005, which is the analytical basis of the study, in addition to the Anti-Corruption Authority's project in 2013. The Authority crystallized the Access to Information Law project based on its responsibilities and role in accountability and anti-corruption.

Specialized bodies sought to enact a law regulating the right to access information through the Access to Information Law project in 2005. However, despite its importance and necessity in practical life, the project was not approved by the competent authorities, either during the Legislative Council's term or through a law decision regarding it. Therefore, this study included interviews with decision-makers, including the the Anti-Corruption Commissioner, the Prime Minister, and some civil society institutions' leaders.

Study Problem

The problematic of the study is the absence of a special law regulating the right to access information in Palestine and the extent to which the draft law on the right to access information, which has not been approved so far, and the Arab legislation regulating the right to access information, are compatible with international charters, standards and best practices regulating this basic right. Human rights, and the problematic reality of obtaining information, despite its great importance in the Palestinian case?

Importance of The Study**Theoretical Importance:**

The theoretical significance of this study lies in understanding the legal regulation of the right to access information through legislation and its alignment in both form and content with international covenants and standards governing this right, considering that the right to access information is one of the fundamental human rights.

The Practical Importance:

The practical significance of this study lies in understanding the extent to which legislation regulating the right to access information meets the requirements of ensuring the realization of this right on the ground and addressing any shortcomings. This is essential as the realization of this right brings multiple benefits, including combating corruption, achieving integrity and transparency in the governance system, and deterring anyone who seeks to gain personal or material advantages by exploiting public office.

Study Questions

Through this study, the researcher seeks to answer the following questions:

1. What is the legal right to access information?
2. What is the definition of the right to access information from a jurisprudential perspective?
3. What is the definition of the right to access information in international agreements and standards?
4. What are the procedures for accessing information in light of the Access to Information Law project and Arab legislation?
5. What are the guarantees of the right to access information in comparative legislation?
6. What are the obstacles that hinder the optimal implementation of the right to access information?
7. What are the exceptions to the right to access information and their compatibility with international standards?

Objectives of the Study

The researcher through this study aims to:

1. Provide definitions of the legal, jurisprudential, and international right to access information.
2. Understand the legal regulation of the right to access information by knowing the procedures for submitting requests for information, the fees charged for it, and the deadlines for responding to such requests.

3. Know the entities responsible for enforcing the right to access information in case it cannot be obtained from the competent employee, whether through complaint, appeal, or judicial review to the relevant courts.

Literature Review

Palestinian Studies:

1. A study entitled "The Freedom of Access to Information between Legal Theory and Practical Reality" by researcher Hassan Hashem Mahmoud Al-Sayed, Master's Thesis - Graduate Studies College at An-Najah University, 2021. This study aimed to define the concept of access to information, identify the principles of the right to access information, highlight the importance of this right, and examine the factors that lead to the adoption of this right in Arab and Palestinian legislation, in addition to discussing the historical development of this right internationally.
2. A study entitled "Freedom of Access to Information in Palestine, Publications of the Coalition for Integrity and Accountability AMAN" by researcher Ahmed Abu Dayya, First Edition, 2005. This study aimed to examine the practical reality of the right to access information through relevant indicators, whether related to the availability of legal regulations governing this right, the freedom to exercise this right in practice, sources, and diversity of information, mechanisms for accessing information, and the extent of freedom of Palestinian media outlets in accessing information from their sources.

Arabic Studies:

1. A study entitled "The Compatibility of the Right to Access Information Guarantee Law in Jordan with International Standards" by researcher Yahya Shuqair, Dar Al-

Manhal, 2012. This study aimed to demonstrate the extent of the conflict between the right to access information law, according to Jordanian legislation, and international standards in this field. It also aimed to address proposed amendments to Jordanian legislation to align it with international covenants on the right to access information and to facilitate citizen and journalist access to information.

2. A study entitled "The Citizen's Right to Access Information from the Public Administration in Jordanian Law Compared to Yemeni Law" by researcher Muath Waleed Mustafa Abu Dallu, Dar Al-Manhal, 2018. This study aimed to examine the legal regulation of the right to access information in light of a comparison between Jordanian and Yemeni legislation. This was done by defining the concept of the right to access information, exploring mechanisms for accessing information, and assessing the compatibility of Jordanian and Yemeni legislation with international covenants on this matter.

Methodology of the Study

This study is based on the comparative analytical approach by analyzing the legislative texts that regulated the right to access information in Palestine and comparing them with Arab legislation and international standards for this right in order to achieve the maximum possible legal benefit for our study, which deals with a fundamental right of great importance in the Palestinian case. This required the researcher to conduct many interviews for the purposes of the research, including the Palestinian Prime Minister, the Anti-Corruption Commissioner, and many official agencies and civil society institutions, in order to reach effective conclusions and results.

Study Plan

The researcher divided this study into two chapters. In the first chapter, the nature of the right to access information was dealt with by defining it in local and comparative legislation, jurisprudence and international standards in the first section of this chapter. In the second section, it dealt with guarantees and obstacles to the right to access information.

While the second chapter is divided into three sections. The researcher dealt with the procedures and restrictions of the right to access information. In the first section of the second chapter, it dealt with the two means of accessing information, whether by submitting a request to access information or accessing information by proactive disclosure (publication); In the second section, the researcher dealt with exceptions to the right to access information, whether these exceptions were allowed for the public interest or for the private interest; in the third section the researcher dealt with the utmost importance of the right to access information in the Palestinian context specifically.

Chapter One

The Nature of the Right to Access Information

States have sought to regulate the right to access information in their national legislations according to two standards. Some countries adopt the principle of the right to access information as a general principle that is only restricted by legislative regulations, going back hundreds of years, based on the fact that the state is obligated to publish information that pertains to it or in its possession unless it is legally prohibited from doing so.

In this regard, some legal scholars argue that "as a member of society, an individual has the right to know all information, regardless of its nature or type, and this is a fundamental and human right. It is of utmost importance, as it is one of the main components of human rights that protect and develop human life"¹.

On the other hand, another perspective argues that "the right to access information is a derivative of the rights to freedom of opinion, expression, media, and communication, and thus falls within the components of the third generation of human rights. This perspective emerged in the mid-1970s"². This perspective is the prevailing trend in international human rights treaties and standards.

In contrast, some countries, including Arab countries, consider information to be the right of its owner, and it is not permissible to disclose it except under exceptional circumstances and within criteria determined by legislation. This is based on the premise that

¹Ahmed Mohamed Taher Hassan: Translation and the Right to Information, Arab Organization for Translation, Volume (6), Issue (20), 2014, Page13.

² Hafiz Arkibi: Limits of freedom of expression and the right to access information in light of the draft law 13.31, Al-Minbar Al-Qanuni Magazine, Issue (10), 2016, Page 155.

information about individuals, whether natural or legal persons, is part of their privacy and freedoms that cannot be accessed by others. This idea is extended to information about the state, its institutions, and local authorities. This approach is an example of authoritarian and opaque states that hide aspects of administrative, financial, and functional corruption through secrecy. It is not justifiable to consider state information as private, as it pertains to all residents of the country. What is the meaning of enclosing such information with secrecy and considering secrecy as the norm and exception for disclosure? This perspective conflicts with international standards."

It should be emphasized that the "international approach" emphasizes the right of every individual to access information as a fundamental and inherent right of society as a whole. It falls within the third generation of human rights and is a right of society as a whole, associated with national integrity, governance, and promoting social control and accountability for official performance.

Given this variation, legal jurisprudence has developed a definition of the right to access information by interpreting the legal texts of the legislation regulating this right, each according to the standard adopted by the state seeking to explain its legal texts. However, the international approach is clear on this path.

Based on the above, and to achieve the desired goal of this chapter, we will divide it into two sections. In the first section, we will address the definition of the right to access information in law and legal jurisprudence, while in the second section; we will address the safeguards and obstacles to the right to access information.

Section One: Definition of the Right to Access Information in Local and Comparative Legislation, Legal Jurisprudence, and International Standards.

Much national legislation has addressed the definition of the right to access information when adopting the right to information within the texts of the legislation regulating it. At the same time, legal jurisprudence has dealt with these definitions and adopted more detailed jurisprudential definitions of what the legal definition contains, even if the definition is not a legislative task unless a dispute arises in practical applications that require legislative intervention to provide definitions.

All of this is based on the fact that "freedom of information circulation is one of the fundamental freedoms that is closely linked to the future of development and progress. The current global progress owes much to the sciences and knowledge made available in the 20th and early 21st centuries by modern communication tools"³.

The legal definition often limits itself to establishing general criteria for the term, based on the fact that legislation rules are generally abstract and address individuals based on their characteristics, not their essence. This makes the task of providing a comprehensive definition of the responsibility of legal jurisprudence.

Therefore, we will divide this section into three subsections. In the first subsection, we will discuss the definition of the right to access information in local and comparative legislation, while in the second subsection; we will discuss the definition of the right to access information in legal jurisprudence. Finally, we will discuss the definition of the right to access information at the level of international agreements and standards in the third subsection.

³ Marwa Mohamed Shaker Zaki: Freedom of information exchange in government information centers: a field study, Arab Portal for Libraries and Information, Issue (58), 2020, Page2.

Subsection one: The Right to Access Information in Local and Comparative Legislation.

Arab and international regional legislations have addressed the right to access information and the information that is subject to the right to access. In this regard, "some Arab countries have enacted laws that regulate their citizens' right to access information, including Jordan, which won the title of the first Arab country to issue a law on the right to access information in 2007, followed by Yemen in 2012, Tunisia in 2016, Lebanon in 2017, and finally Morocco in 2018"⁴. Currently, there are over one hundred countries that have this law.

In this regard, legal jurisprudence states that "the emergence of democratic systems has led to winds of change that have blown over various legal systems, driving them to establish the right to information and formulate it in binding texts that have reached the point of sanctifying it as one of the fundamental rights of citizens that has been enshrined"⁵.

Enacting laws that regulate the right to access information is considered a characteristic of states that seek to promote a national integrity system, enhance the principle of democratic participation, separate powers, and strengthen popular oversight over the role entrusted to the executive authority and its institutions, as they are responsible for implementing laws and safeguarding security, rights, and freedoms, which results in a high volume of data and information being accessible to them due to the relationship between the executive agencies.

⁴ Rehab Farid Ahmed Mohamed: The right to access information - a comparative study, National Center for Legal Publications, first edition, 2020, Page 128.

⁵ Maria Boujdain: The right to access information between the boldness of administrative reform and guarantees of implementation, Journal of Legal Research and Studies, Issue (17), 2020, Page 6.

In Jordan, The Jordanian legislation stipulates that "information is any verbal or written data, records, statistics, written or visual documents, electronically stored or by any means, under the management or jurisdiction of the responsible entity or its jurisdiction"⁶.

In this regard, the legal definition in the Jordanian legislation included all forms of information, whether written or verbal and whatever forms the information is stored in. This reflects the desire to embody the right to access information in all its forms.

On the constitutional level of Jordanian legislation, the Jordanian Constitution of 1952 and its amendments did not explicitly include the right to access information in its legal texts. However, Jordanian legal jurisprudence finds the legal basis for this right based on what was stipulated in Article (15/1), which guarantees freedom of opinion and the right of every Jordanian to express their opinion freely by speaking, writing, photographing, and all other means of expression, provided that they do not exceed the limits of the law. In this context, some Jordanian legal scholars believe that what was stipulated in Article (15) of the Jordanian Constitution "has added protection to freedom of expression and freedom of the press, based on the fact that ensuring the necessary protection for freedom of expression and opinion can only be achieved by granting citizens the right to access information that enables them to criticize any action that is flawed or incorrect"⁷.

Empowering citizens with their right to access information provides them with the ability to participate, offer constructive criticism, monitor, and hold administrative entities accountable. Information is considered the foundation through which confrontation and

⁶Article (2) of Law No. 47 of regarding guaranteeing the right to access information, 2007, Jordan.

⁷ Lina Mohammad Odeh Al-Agawat: Master's thesis entitled "The administration's right to possess administrative papers according to the guarantee law for the right to access information No. (47) of 2007", Mutah University - Jordan, 2018, Dar Al-Manthouma, Page 50.

accountability are achieved, and without it, it is impossible to hold administrative entities accountable because the evidence represented by information is missing.

The Jordanian Press and Publications Law No. (8) of 1998 also addressed the journalist's right to access information. Accordingly, it stipulated that "freedom of the press includes the right to access information, news, and statistics that concern citizens from various sources, analyze them, circulate them, publish them, and comment on them"⁸.

The law also stated that "journalists have the right to access information, and all official bodies and public institutions must facilitate their task and provide them with the opportunity to learn about their programs, projects, and plans"⁹.

In this regard, we find that the Jordanian legislator has emphasized the importance of the right of a specific segment of society, namely journalists, to access information. This is because they are the ones who generally seek to obtain information and publish it, as they are considered the fourth authority in democratic countries after the judicial, legislative, and executive authorities.

In Morocco, Law No. 31 of 2013 on the right to access information defines information as "a set of data and statistics expressed in the form of numbers, letters, drawings, images, audio or visual recordings, or any other form included in documents, papers, reports, studies, journals, memos, databases, and other public documents produced or obtained by public entities in the performance of their public functions, regardless of their physical or electronic form"¹⁰.

⁸ Article (6) of Printing and Publication Law No. 8, 1998, Jordan.

⁹ Article (8) of Printing and Publication Law No. 8, 1998, Jordan.

¹⁰ Article (2) of Law No. 13-31 on the right to access information implemented by Dahir No. 15-18-1 issued on 22/2/2018, Morocco.

Therefore, the Moroccan Constitution considers "access to information a right for every citizen, and this information is information that is in the possession of public administration, elected institutions, and bodies responsible for public services, and any person can have access to it by others. Public administration is obliged to facilitate access to it"¹¹. In this regard, we see that the Moroccan legislator had a broader definition of information than other legislations, as it includes several forms of information obtained by administrative entities, regardless of their physical or electronic form."

It is worth mentioning in this context that the institutionalization of this right did not come out of a vacuum. Rather, various civil society organizations concerned with transparency, combating corruption and bribery, as well as political parties and human rights activists, called for it, considering it one of the pillars that guarantee the principles of transparency and legitimate citizenship.¹²

Therefore, it can be said that modern trends, including those that keep pace with technological and technical developments, interpret information in a broad sense that includes all documents held by public entities, regardless of their form, whether they are papers, tapes, electronic recordings, etc., and regardless of their source, whether they are provided by a public entity or any other body, and the date of their creation or production.¹³ This confirms the importance and necessity of protecting this right and ensuring its implementation.

¹¹ Mohammed Tayeb Boutibi: The right to access information as a human right, *Rissala Al-Difaa Journal*, Issue (12), 2013, Page 9.

¹² Rachida Badq: The right to access information in Morocco: a reading of regulatory law number 31.13, *Publications of Legal Notebooks Magazine - Administrative Notebooks series*, Issue (5), 2018, Page 87.

¹³ Kabour Saadani: The right to access information in light of the draft law 31.13, *Al-Manar Journal for Legal and Administrative Studies*, Issue 19, 2017, Page 104.

Similarly, the Moroccan Press and Publication Law recognized the right to access information, stating that "all media outlets have the right to access news sources and obtain information unless such information is classified as confidential by law"¹⁴.

In this regard, we see that the Moroccan legislator, like the Jordanian legislator, has provided journalists with the opportunity to obtain information as they are generally the ones who are concerned with accessing information and disseminating it through various media channels, whether audio, visual, or written.

In terms of the constitutional legislation in Morocco, the right to access information has been explicitly stated, and it is affirmed that "citizens have the right to access information held by public administration, elected institutions, and bodies responsible for public services"¹⁵.

This constitutional provision emphasizes the importance of the right to access information as a fundamental right for citizens in Morocco, which should be protected and upheld by public entities.

According to Moroccan legal jurisprudence, the provision recognizing the right to access information within the constitutional texts "did not come out of a vacuum or voluntary will of the legislator but came under pressure from civil society organizations, political parties, the media, and several human rights activists. The right to access information was at the heart of the concerns of many Moroccan associations working in the field of transparency, combating corruption and bribery, and improving public life"¹⁶.

¹⁴ Article (1) of Moroccan Press and Publication Law amended on 21/1/2012.

¹⁵ Chapter (27) of The Moroccan Constitution was issued in 2011.

¹⁶ Mohammed El Raji: The constitutional and legislative framework for the right to access information in Morocco, *Law and Business Journal*, Issue (53), 2020, Page 20.

Indeed, the Moroccan legislator did the right thing by recognizing the right to access information through a constitutional provision, as this provides constitutional protection and ensures a serious commitment to achieving and respecting this right in practice, particularly when administrative bodies seek to encroach upon it.

In Palestine, it is worth mentioning that there is no effective law that protects, guarantees, and regulates the right to access information. However, a draft law on the right to access information was prepared in 2005 by the first Palestinian Legislative Council, but it was not enacted¹⁷. This draft law defined information as "any information found in any written or electronically stored records, drawings, maps, tables, images, films, microfilms, sound recordings, videotapes, graphics, or any data read on special devices or any other forms that the General Commissioner deems to fall within the scope of information according to this law"¹⁸.

The same draft law also defined publication as "making information accessible to the public in a manner and form that facilitates public access, including printing, broadcasting, electronic communication, or any other known or future means of dissemination"¹⁹.

On the constitutional level, the Basic Law of the State of Palestine and its amendments did not explicitly include the right to access information. This may be because Arab

¹⁷ It should be noted that there is another draft law on the right to access information, which was prepared in the year 2013, and there is also a draft prepared by the Anti-Corruption Commission, in the year 2018, and it defines information and publication in its first article as follows: Information It is the data existing or kept by any institution by any means, whether it is records or documents written and preserved electronically, or drawings, or maps, or tables, or pictures, or films, or microfilms, or graphs, or any data read on special devices, or any other forms.

¹⁸ Article (1) of the draft law on the right to access information.

¹⁹ Ibid

legislations, in particular, are relatively recent in recognizing and regulating this right, with Jordan being the first country to regulate it in 2007, while some Western legislations have recognized and regulated this right for over 250 years, such as Sweden, which was followed by Australia, Canada, and New Zealand in 1982²⁰.

However, the Basic Law provided a legal environment that can be relied upon to recognize this right. It stated that "freedom of opinion shall be guaranteed, and every person shall have the right to express and disseminate his opinion verbally, in writing, or by other means of expression or art, by the provisions of the law"²¹.

Upon examining this constitutional text, it becomes clear that the realization of the constitutional right to freedom of opinion and expression cannot be achieved without providing a legal environment based on a constitutional right to access information. Freedom of opinion and expression always needs to be based on accurate information, and without access to such information, individuals may be vulnerable to prosecution for defamation.

The Palestinian draft constitution recognized the right to access information for both citizens and journalists. The draft stated that "journalists and citizens have the right to access news and information transparently and responsibly, by the conditions regulated by law"²².

Furthermore, the draft also called for "the establishment of an independent public authority composed of legal and political figures without any official status, responsible

²⁰ Mohammed Hussein Abu Arqoub: Research paper entitled "The readiness of Palestinian media institutions to use the right to access information law", Birzeit University, First edition, 2016, Page 6.

²¹ Article (19) of The Palestinian Basic Law was amended in 2005.

²² Article (4) of The Palestinian draft constitution.

for monitoring the status of citizens' rights and freedoms, with the power to obtain information transparently and responsibly"²³.

The Palestinian draft constitution did the right thing by institutionalizing the right to access information as a constitutional right and explicitly stating it. Enshrining this right in the constitution will have a significant impact on the implementation of the right and the achievement of popular oversight over the actions of the government and its agencies, thereby building a solid foundation for the rule of law.

The Palestinian General Statistics Law No. (4) of 2000 also addressed the right to access information. The law states that "all members of society have the right to access official statistics collected, prepared, and published by the department under the regulations and instructions in force while taking into account the confidentiality of data and the privacy of individuals"²⁴.

This demonstrates that the Palestinian legislature has regulated the right to access information in the context of official statistics, and has provided individuals, whether citizens or non-citizens, with the right and authority to access such information from its source, in accordance with the relevant legislation.

According to the General Statistics Law mentioned earlier, the information that can be collected, stored, and analyzed includes a wide range of data, which is outlined in the following areas:

²³ Article (59) of The Palestinian draft constitution.

²⁴ Article (4) of General Statistics Law No. 4, 2000.

A. The size and composition of the population, and the changes that occur to the population through:

1. Births
2. Deaths
3. Migration
4. Formation of households and families, and their disappearance

B. Social affairs including:

1. Labor force and working conditions.
2. Household income, expenditure, and consumption.
3. Education and opportunities for enrollment in schools and universities.
4. Health and access to medical care.
5. Family and conditions for families with special needs.
6. Housing and facilities.
7. Culture and entertainment.
8. Victims of accidents and crimes.
9. Elections.
10. Women's issues.
11. Any other areas within the scope of social issues.

C. The national economy, including:

1. National accounts.
2. Balance of payments and foreign trade.
3. Government financial affairs...etc²⁵

²⁵ Article (5) of General Statistics Law No. 4, 2000.

The aforementioned article of the General Statistics Law contains several concepts that constitute models of government information, which the Central Statistical Organization is required to disclose to the public to access and define them.

Similarly, the Environmental Law No. (7) of 1999 addressed the right to access information regarding the environmental aspect of the state. The law stipulates that "any person has the right to obtain the official information necessary to identify the environmental effects of any industrial, agricultural, urban, or other development activity, by the law"²⁶.

In this regard, the researcher believes that environmental information is of no less importance than financial or other types of information and that the aforementioned provision came in a general manner without restricting the parameters, whether related to industrial, commercial, or urban state projects.

In this context, "the right to access environmental information is a fundamental gateway to protecting humans and creating an environment free from all factors that could affect human health and life. However, for society to have the ability to protect the environment, the right to access information must be actively practiced and effectively established at all levels"²⁷.

The right to "live in a healthy environment is a fundamental right among our human rights, reinforced by international covenants. For any society to have the ability to protect its environment, the right to knowledge must be available to everyone at all levels. The responsibility for protecting the community and its health depends on the existence of

²⁶ Article (3) of the Palestinian Environmental Law No. 7 of 1999.

²⁷ Ahmed Mafid: The Right to Access Information and Participation in Public Life, Moroccan Journal of Local Administration and Development, Issue (114), 2014, Page 22.

environmentally aware individuals, and when citizens are armed with knowledge, they can become the driving force"²⁸.

The Press and Publication Law No. 9 of 1995 addressed the right to access information and considered it as one of the chapters of freedom of the press. Accordingly, the law stipulates that "freedom of the press includes the following:

1. Informing citizens about facts, ideas, trends, and information at the local, Arab, Islamic, and international levels.
2. Allowing citizens to express their opinions.
3. Researching information, news, and statistics that are of interest to citizens from various sources, analyzing them, and circulating and commenting on them within the limits of the law..."²⁹

The same legislation also mandated official entities, with the element of obligation, to facilitate the task of journalists and researchers in accessing their programs and projects, as well as their information. Accordingly, the law stipulates that "official entities should facilitate the task of journalists and researchers in accessing their programs and projects"³⁰.

Similarly, the General Budget Law No. 7 of 1998 addressed information and the right to access it through proactive disclosure of such information. The law tasked all ministries and public institutions with providing the General Budget Department with all the data,

²⁸ Bilal Al-Barghouthi: The Right to Access Information or Freedom of Information, An-Najah University Library / Al-Haram Al-Jadid, Nablus, Law Development Project Series, Page 22.

²⁹ Article (4) of Law No. 9 of 1995 on printing and publishing.

³⁰ Article (6) of Law No. 9 of 1995 on printing and publishing.

information, and schedules they have, to enable the department to prepare the budget³¹ and then publish it for the public after its approval by the competent authorities. Accordingly, the law stipulates that "the General Budget Law is published for the public after its approval by the Legislative Council of Public Media and the public"³².

It is not hidden in this regard that the practical aspects included in the general budget are of great importance, as they involve financial data and information that are of great interest to the public, considering that the public is responsible for paying fees and taxes and has the right to access information about the fate of what the state collects throughout the year. This is from the perspective of financial oversight by the people, which is followed by oversight by their elected representatives in the Legislative Council.

The Palestinian Financial and Administrative Monitoring Law also addressed the right to access information, but in an indirect way that would not yield results unless the Palestinian Legislative Council was convened to implement those legal provisions.

Accordingly, the law stipulates that "the Audit and Administrative Control Bureau has access to all reports, information, and data received from employees, as well as reports on investigations into violations that affect financial and administrative matters, and may request to be provided with all the information and clarifications it needs from all government departments related to its work"³³.

The same legislation also stipulates that "the head of the Bureau shall provide an annual report or upon request to the President of the National Authority, the Legislative Council,

³¹ Article (24) of Law No. (7) of 1998 regarding the organization of the general budget and financial affairs stipulates that: All ministries and public institutions must provide the General Budget Department with all the data, information, schedules and clarifications it requests without delay.

³² Article (38) of Law No. (7) Of 1998 regarding the organization of the general budget and financial affairs.

³³ Article (25) of Law No. 15 of 2004 on the Audit and Administrative Control Bureau.

and the Council of Ministers on its work and observations, and he shall provide the President of the National Authority, the Legislative Council, and the Council of Ministers with any data, information, studies, or research they request, and carry out any other work assigned to it by any of them, and publish its annual report in the official newspaper"³⁴.

The legislation also granted the Legislative Council, as the representative of society, the authority to request information from the Bureau regarding a particular incident. Accordingly, the law stipulates that "the Bureau shall provide reports on some important matters that require urgent consideration to the President of the National Authority, the Legislative Council, the Council of Ministers, and the concerned minister"³⁵.

Despite the absence of a comprehensive and effective law on the right to access information in Palestine, and the fact that this right is addressed in scattered provisions in existing laws, as we have seen, the main problem lies in the weakness of mechanisms and guarantees for citizens to access information from official entities, and accountability in case of failure to provide such information.

In Egypt, Law No. 356 of 1954 on the establishment of the National Archives Institute recognized the right to access information as a primary principle. Accordingly, the law stipulates that "it is permissible to take photographic or linear copies of the documents deposited in the institute by the rules determined by the council, which shall be issued by the Minister of National Guidance"³⁶.

The Press and Media Regulation Law and the Supreme Council for Media Regulation also enshrined this right for journalists without specifying the meaning of information.

³⁴ Article (8) of Law No. 15 of 2004 on the Audit and Administrative Control Bureau.

³⁵ Article (28) of Law No. 15 of 2004 on the Audit and Administrative Control Bureau.

³⁶ Article (9) of Law No. 356 of 1954 on the establishment of the National Historical Documents House.

Accordingly, the law stipulates that "the journalist or media person has the right to publish information, data, and news that is not prohibited by law, and government and public entities are obligated to establish a department, office, or website to communicate with the press and media to enable journalists or media persons to access data, information, and news"³⁷.

The same law also prohibits "imposing any restrictions that hinder the provision and availability of information, or impede equal opportunities between different printed and electronic newspapers, visual and audio media, or their right to access information"³⁸.

The Egyptian legislature has not yet enacted a specific law on the right to access information, despite several initiatives to do so. "In early February 2012, several civil society organizations, academics, and journalists submitted a draft law on the freedom of information to the People's Assembly. In May, the Information Technology Institute, affiliated with the Ministry of Communications and Information Technology, presented a draft law on data and information accessibility for social dialogue through online communication mechanisms to achieve maximum community participation in that dialogue. Finally, in March 2013, the Egyptian Ministry of Justice organized a conference on the freedom of information, during which the United Group presented a third draft law on the freedom of information"³⁹.

³⁷ Article (9) of Law No. 180 of 2018 on the regulation of the press, media, and the Higher Council for Media Regulation.

³⁸ Article (9) of Law No. 180 of 2018 on the regulation of the press, media, and the Higher Council for Media Regulation.

³⁹ Towards the Freedom of Information Law in Egypt, Public Budget Observatory and Human Rights, Public Policy Papers, 2015, Page 10.

In Algeria, the amended Algerian Constitution explicitly recognizes the right to access information. Accordingly, the constitution stipulates that "access to information, documents, statistics, and their transmission is guaranteed to citizens"⁴⁰.

In Algerian ordinary legislation, Law 88/09 on the National Archives defines archival documents and their sources. The law states that "archival documents are any documents that contain important information, regardless of their date, form, or material support, produced or received by any natural or legal person, public or private entity, while carrying out their activities"⁴¹.

The law also states that "the archives, under this law, consist of a collection of documents produced or received by the party, state, local communities, natural or legal persons, whether from public or private law, during the exercise of their activities, known for their benefits and value, whether preserved by their owner, holder or transferred to the specialized archive institution"⁴².

The municipal law has addressed the right to access information and defined it within its legal context and articles. It states that "every person has the right to access the minutes of the council's meetings and municipal decisions"⁴³.

In Yemen, information is defined as "perceived facts in awareness that exist morally as cognitive and material values in the form of numbers, letters, symbols, images, and sounds, which are collected, processed, stored, and exchanged through electronic and paper media"⁴⁴.

⁴⁰ Article (51) of The Algerian Constitution, 2016.

⁴¹ Article (2) of Law 88/09 on the national archive issued on 26/1/1988.

⁴² Article (3) of Law 88/09 on the national archive issued on 26/1/1988.

⁴³ Article (14) of Law No. 11-10 of 22 June 2011 concerning municipalities, published in the Official Gazette No. 37 of 3 July 2011.

⁴⁴ Article (2) of Law No. 13 of 2012 on the right to access information.

In Iraq, the Iraqi constitution of 2005 does not include a specific provision on the right to access information, "despite containing many provisions that changed the form of the Iraqi state and its governance system"⁴⁵.

After defining the legal definition of the right to access information in Arab legislation, constitutions, and international conventions, we move on to the second requirement, which is defining the right to access information in Islamic jurisprudence.

Subsection Two: The Right to Access Information in Legal Jurisprudence.

The legal terminology regarding the right to access information may differ, as terms such as "freedom of information"⁴⁶, "right to access information and documents"⁴⁷, and "transparency"⁴⁸ are used interchangeably to refer to the same concept of the right to access information.

Before delving into the legal definitions of the right to access information, it is important to emphasize that this right is not only a necessity for citizens, "but is also a fundamental need for any government that seeks to demonstrate its competence. Reforming state institutions and making them more efficient and transparent is a cornerstone of good governance and can only be achieved through providing information and facilitating access to it"⁴⁹.

⁴⁵ Mohammed Jabbar Talib: The right to access information as a human right, College of Law - Al-Qadisiyah University, Page 263.

⁴⁶ The United States of America uses this term in its legislation.

⁴⁷ For example: India.

⁴⁸ For example: the Swiss Confederation.

⁴⁹ Bilal Al-Barghouthi: The Right to Access Information or Freedom of Information, An-Najah University Library / Al-Haram Al-Jadid, Nablus, Law Development Project Series.

Therefore, it is of utmost importance to note that the definition of the right to access information should reflect these perspectives and be framed accordingly. The legal definition of the right to access information should be well-versed in these directions.

The right to access information is not only a right of citizens but also a duty placed on the state, which should disclose information to demonstrate its commitment to involving the public in the management and oversight of its affairs. This is necessary to improve the state's situation and achieve the necessary transparency and integrity to demonstrate the truth and seriousness of the state in declaring its information.

Legal jurisprudence usually deals with definitions and legal terminology contained in legislation, and regarding the definition of the right to access information, some argue that⁵⁰ this right includes all information in any form, whether written, oral, visual, or pictorial, whether such information is preserved in written or electronic documents. This includes all ministerial reports, general statistics, ministerial instructions, government contracts, parliamentary sessions and committees of all types, and annual reports.

Most legal scholars, who have addressed the definition of the right to access information, as we will explain later, see that this term consists of three terms: right, access, and information. Each of these terms must be addressed to achieve the desired goal of defining it. Other scholars define the right as "a privilege determined by the law for someone and protected by legal means, which allows them to act arbitrarily... recognized as an exclusive right as an owner or entitled to it"⁵¹.

⁵⁰ Ali Karimi: The Right to Information Through International Law, Moroccan Center for Studies and Research in Human Rights and the Media, published at the link: <http://cmerdh.com/6575>.

⁵¹ Moaz Walid Mustafa Abu Dalu: The citizen's right to access information from the public administration in Jordan in comparison to Yemeni law, Dar Al-Monzuma, 2018, Page 24.

In this regard, the right may be a financial right or a moral right, as is the case with the right to access information, which is considered one of the moral rights of individuals and does not have any of the characteristics specific to defining financial rights.

Therefore, the right to access information is a privilege granted by the legislator to individuals to request and obtain information, by legal regulations that ensure the realization of that right within the legal framework established by the law to guarantee the enjoyment of that right as a privilege for the individual.

Regarding the term "access" means obtaining and possessing a specific thing. In the case of accessing information, it is appropriate for the information requester to retain a copy of it to present it to the authorities that they believe need to receive it. Otherwise, it provides a way to evade that information and modify it if necessary.

In this regard, researcher Mohammed Hussein Abu Arqoub sees that "journalists and media professionals need to retain the document as a source of information. Simply reviewing it is not enough, as many journalists are forced to show these documents to prove the accuracy and truthfulness of their published information"⁵².

Regarding the definition of information, linguistically, it is derived from "to know" and information is characterized by the abundance of its specialized vocabulary and the diversity of its meanings. For example, there is information related to science and education, perception and understanding, consciousness and certainty, and much more. This makes us say that information is what is related to the mind and its functions⁵³.

⁵² Mohammed Hussein Abu Arqoub: The Palestinian experience in the access to information law project - Palestinian Center for Policy and Media Sources - Internews project in the West Bank and Gaza, 2012, Page 13.

⁵³ Define "information" linguistically.

Information is defined as "data that has been processed to become meaningful and significant for a specific purpose of decision-making, and can therefore be circulated, recorded, published, and distributed formally or informally and in any form, as they are facts that scientific research reaches after several stages of exploration, investigation, inference, and experiments that are built on the scientific method"⁵⁴.

Information can be classified into several categories. Based on the source, there is official and unofficial information. Official information, in this context, "refers to all the information produced and presented by the information systems within an organization. On the other hand, unofficial information is information that comes from outside the organization's information systems, which includes information from both official and unofficial sources..."⁵⁵

Information can also be classified based on the degree of change. Static information refers to unchanging information, such as personal identification records and civil status records. Dynamic information, on the other hand, refers to information that is subject to change, such as budgets and expenditures. Both static and dynamic information are subject to the right to access information.

Information can also be classified according to the level of decision-making, including:

- 1- Strategic information,
- 2- Administrative information,
- 3- Operational information.⁵⁶

⁵⁴ Sana Dwaikat: Defining information and its most important forms, published on the electronic link: Mawdoo3.com, on 16/7/2022 at 10:00.

⁵⁵ Ibid

⁵⁶ Thabet Idris: Administrative Information Systems in Contemporary Organizations, Dar Al-Jami'a, Alexandria, 2005, Page 29.

Information can be classified based on its form, including:

- 1- Textual information,
- 2- Visual information,
- 3- Audio information.⁵⁷

Regarding the definition of this right at the international level and by international organizations, it has been defined as "the right granted by law, often through access to information legislation, to access facts and basic information from the government or any other ethical entity"⁵⁸.

Under this right, governments that adopt this right in their legislation are legally obligated to publish such information publicly for their people and citizens and to respond to any request for information deemed necessary, within the limits allowed by the governing legislation, without affecting the information that is prohibited from publication, based on internationally recognized exceptions in this regard.

Based on the above, some have defined the right to access information as "the right that allows citizens the freedom to inquire about any information available in the public administration and receive an answer, in one way or another. It is a human, natural, and fundamental right for individuals and groups... information must be available to anyone who requests it"⁵⁹.

⁵⁷ Sabrina Maqani: Documentary formation at the Central Library of Mentouri University Constantine, unpublished doctoral thesis, Constantine University, Algeria, 2008, Page 84.

⁵⁸ Transparency International: An international non-governmental organization concerned with corruption. It was established in 1993 and is known internationally for its annual report, the Corruption Index, which is a comparative list of countries in terms of the prevalence of corruption around the world. It is headquartered in Berlin.

⁵⁹ Sakina El Boutahri, Iman Iskass, Othmane Sfiani, and Aamir Al-Habib: The right to access information and professional secrecy, Faculty of Legal, Economic and Social Sciences - Mohammed V University in Rabat, 2017/2018, Page 7.

Others view freedom of information as meaning "public bodies publishing documents of significant public interest and distributing them widely, such as practical information about how any public body operates and the content of any decision or policy that may affect the people"⁶⁰.

The researcher in this regard believes that the aforementioned definition is flawed, as it is necessary to include the right of the individual to request disclosure of a specific piece of information, as most public bodies in the world seek to conceal specific and important information that is not prohibited from publication, such as office expenses and frivolous expenditures, for example.

This right is also known as freedom: "the freedom to access data, information, and official records in public institutions, as well as the ease of procedures for obtaining official information, the reasonableness of the costs of accessing information, the smooth flow of official information, and not limiting information seekers and preventing them from obtaining information, ensuring this right by law and protecting it"⁶¹.

The researcher believes that this definition expands in defining the meaning of the right itself to include the procedures for obtaining information and the measures and guarantees that public administrations must take to enshrine this right, which goes beyond the role of definition to the role of statement and specifying procedures and guarantees.

The right to information is also defined as "allowing citizens to access information held by the government, through legislation that grants the right to request information from public authorities, to promote a culture of openness and accountability among public

⁶⁰ Michael Carr and Toby Mendel: Establishing freedom of information: An analysis of constitutional protection of freedom of information, 2012, Page 6.

⁶¹ Freedom of Information and Access: The Basis for Transparency and Accountability, Coalition for Integrity and Accountability – AMAN, Page 9.

sector entities, and to facilitate the public's better understanding of how public authorities perform their duties"⁶².

Another aspect of jurisprudence defines this right as "the individual's right to obtain data, records, and all types of information that is subject to the control of public bodies or private companies with a public interest or wholly owned by the state, except for explicit provisions in the law"⁶³.

In this regard, it can be said that the aforementioned definition has unleashed the right of anyone who desires to obtain information, disregarding the requirement for the request to be in the public interest. It is not correct to grant everyone access to all information, especially if it does not concern them. However, if the requested information is of public interest, then there is no objection to granting access to everyone to request it. Otherwise, it opens the door to many requests for information, which imposes unnecessary costs on governments, especially if the state adopts a preemptive approach in publishing information without any request from anyone.

Another aspect of jurisprudence defines the right to access information as "allowing citizens to access information held by the government, through legislation that grants the right to request information from public authorities, to promote a culture of openness and accountability among public sector entities, and to facilitate the public's better understanding of how public authorities perform their duties"⁶⁴.

⁶² Marwa Mohamed Shaker Zaki: Freedom of information exchange in government information centers: a field study, Arab Portal for Libraries and Information, Issue (58), 2020, Page 6.

⁶³ Hussein Suleiman Al-Hadithat: The Condition of Interest in Accessing Administrative Information, Journal of Sharia and Law Sciences, University of Jordan - Deanship of Scientific Research, Volume 43, Issue 3, 2016, Page 250.

⁶⁴ Ibid

Another aspect of jurisprudence defines the right to access information as "the ability of any individual to access information held by various state agencies, except for explicit provisions or the right of the individual to access information securely held by the state, and the obligation of the entity to provide the information to them"⁶⁵.

This definition is criticized for specifying the information that is subject to disclosure as only the information held by the state in a secure manner, which is a matter of debate. What distinguishes secure information from insecure information, and why does the state keep information in an insecure manner, to begin with?

The right to access information is also defined as "the right to access administrative information, data, and statistics without any hindrance and to activate modern means to achieve this purpose...in the field of e-government and individuals' freedom to access documents they need without the need to justify their request unless it is shown that the request threatens public interest and national security"⁶⁶.

The researcher believes that this definition can be criticized for expanding to include modern means of accessing information, without any specific purpose. The legal definition should be limited to defining the legal meaning of the term and protecting it, rather than specifying the means used to access it.

⁶⁵ Rehab Farid Ahmed Mohamed: The right to access information - a comparative study, National Center for Legal Publications, first edition, 2020, Page 50.

⁶⁶ Abdelli Hamza: The principle of transparency of administrative work and the right of individuals to access information at the national level and international covenants, University of Djelfa, Studies and Research Journal, Volume (11), Issue (2), 2019, Page 59.

Some define the right to access information as "the right to access information first and foremost, as a fundamental and necessary right to exercise several human rights, and as a necessary aspect of good governance and political participation"⁶⁷.

The researcher believes that this definition does not provide any specific legal definition, as it only emphasizes the importance of the right as a fundamental right that plays an effective role in good governance, without specifying the nature of the right itself.

The researcher suggests a better definition of the right to access information as "the right of an individual living in a society to obtain sufficient information from the administration and the authority that governs this society about the public interests that concern them and that they wish to know. The right to access information is an essential detail of democracy"⁶⁸.

This definition emphasizes the right of the individual to access information that concerns the public interest in the state, and the need for the individual to have access to that information through the legally designated entity.

The International Transparency Organization defines the right to access information as "the legally granted right - often through freedom of information legislation - to access facts and basic information from the government, and any other public body. Such information includes, for example, budgets, project approvals, evaluations, and at the same time, citizens have the right to request the publication of specific documents"⁶⁹.

⁶⁷ Ensuring the Right to Access Information to Promote Good Governance in the Security Sector - Report Series, Publications of the Center for Human Rights and Democracy Studies, First Edition, 2014, Page 3.

⁶⁸ Nahla Abdulqader Al-Moumani: The right to access information in the Jordanian legal system and regional and international human rights standards, Dar Al-Monzuma, 2015, Page 9.

⁶⁹ Suleiman Haj Azam: Information sharing as a mechanism for preventing and combating corruption, Mohamed Khider University of Biskra - Faculty of Law and Political Science - Laboratory of the Impact of Judicial Interpretation on Legislation Movement, Issue (15), 2017, Page 34.

Upon reviewing the aforementioned definitions, it becomes clear that the concept of the right to access information must include several elements to provide a comprehensive definition of this right. Firstly, the disclosure of information must be included, and this element is embodied in the principle of transparency and disclosure of information by states to the public, unless such information affects national security and within the established limits of international human rights standards (legality, necessity, proportionality) in order not to empty the right of access to information of its content under broad and immeasurable limits.

In this regard, it is necessary to "base the principle of disclosure of information on the presumption that all information is subject to disclosure except in specific cases provided for by the law, and accordingly, public bodies must commit to disclosing all information that has not been explicitly exempted by a legal provision"⁷⁰.

It should be noted that the burden of proving that the disclosure of such information affects national security and public order lies with the state, not with citizens. International standards must be respected, meaning that the three-part test (legality, necessity, proportionality) must be applied, which involves the presence of a clear and explicit legal provision, a legitimate and urgent necessity justifying the non-disclosure of the information, and proportionality with the right to be protected.

Therefore, a citizen submits a request to obtain information, and the default is for the administrative authorities to provide an answer to that request, unless those authorities bear the burden of proving that the information is not public and is subject to an explicit and specific legal provision that meets the conditions of necessity and proportionality.

⁷⁰ Bilal Othman: The Right to Access Information or Freedom of Information, Independent Palestinian Authority for Citizen's Rights, without a publishing house, Page 11.

This would constitute an "exception" to the general principle of the free flow of information.

It should be emphasized that the default is for citizens to have access to information through the state's commitment to publishing it on its own or making it available to the public for access. Any exception to this principle must be limited by a clear, explicit, and specific legal provision, and the state must be obliged to prove that the prohibited information is related to national security and public order.

In the Palestinian context, the General Statistics Law has adopted this element, as it states:

1. "Establishing a comprehensive and unified statistical system that serves as a tool for Palestinian ministries and institutions to diagnose problems and evaluate progress.
2. Providing accurate official statistics on the demographic, social, economic, and environmental situations and trends to serve the Palestinian community.
3. Raising public awareness by providing information through various media outlets and collaborating with universities and other research institutions.
4. Serving businesses and economic institutions by providing statistical information on employment situations and trends"⁷¹.

Thus, the aforementioned provision "has made the provision of information by the statistical agency a right for the public, while also imposing an obligation on the agency to establish a statistical library that includes Palestinian and international statistics and

⁷¹ Article (3) of the General Statistics Law No. 4 of 2000.

meets the Palestinian community's information needs through the development of various administrative and central records"⁷².

The other element of the definition of the right to access information is the commitment of states that have adopted this right to self-publication of such information to the public for access, regardless of the means used for publication.

In other words, governments, public and local institutions are obliged to publish information related to their work and the information they obtain, even if no one requests it. This is based on the fact that the right to access information is not fully realized and optimally utilized unless government agencies proactively publish information. This ensures that anyone who requests access to more detailed or related information than that which public institutions have disclosed can obtain it. This is the proper embodiment of the right to access information.

The right to access information is "a necessity for combating corruption since information is necessary for making informed decisions"⁷³. When information is not freely available,

⁷² Jabril Mohammed and Nada Haniti: *The Citizen's Right to Access Public Information*, Report Series 7, Publications of the Coalition for Integrity and Accountability , 2007, Page 4.

⁷³ The World Bank defined it in its 1997 Development Report as: "the misuse of public power for personal gain." Since this definition neglected obtaining gains for others, Transparency International stepped in and defined corruption as: "the misuse of entrusted power for personal gain." private. Corruption, in this sense, is represented in committing one of the criminalized behaviors in the Prevention and Combating of Corruption Law in Chapter Four of it, which includes bribery or unjustified privileges in the field of public deals, embezzlement or illegal use of public funds, treachery, abuse of influence, misuse of position and receiving a gift.

Suleiman Haj Azam: *Information sharing as a mechanism for preventing and combating corruption*, Mohamed Khider University of Biskra - Faculty of Law and Political Science - Laboratory of the Impact of Judicial Interpretation on Legislation Movement, Issue (15), 2017, Page 42.

corruption can thrive, and basic rights may not be available. In such cases, corruption can hide behind the veil of secrecy"⁷⁴.

One of the elements of the legal definition of the right to access information is the dissemination of culture among the general public that access to information is a right for citizens, and they can assert that right and request it. This is achieved through the enactment of legislation in this field and the preparation of necessary publications and seminars to enable citizens to access that information, retain it, and use it if necessary for specialized agencies. This is done to involve all citizens in the proper functioning of the state administration and ensure popular oversight of state affairs.

The recognition of the right to access information is "closely linked to accountability, which is the central goal of any democratic system. Without it, any attempt to hold the government accountable is difficult, if not impossible. As long as government activities and decision-making processes are conducted away from public scrutiny, secrecy prevails, and the possibility of resource waste occurs, with no subsequent review by state institutions"⁷⁵.

One of the essential elements of the proper legal definition of the right to access information is that exceptions to accessing information should be limited wherever possible. The principle is that the right to access all information is the default, and exceptions are made to restrict access to some information for purposes related to the state's higher interests. Revealing such information to the public may endanger the state's safety and security.

⁷⁴ Information Ownership: Accessing Information in Palestine, 2013 Publications of the Coalition for Integrity and Accountability – AMAN, Page 8.

⁷⁵ Freedom of Information and Access: The Basis for Transparency and Accountability, Coalition for Integrity and Accountability – AMAN, Page 6.

Based on the above, legislation in this regard must commit to identifying information that must be prohibited from publication with accuracy and specifying them in clear texts. The legal and practical feasibility of not publishing such information should also be determined.

It is not enough for legislation to merely prohibit certain information without specifying the reasons behind it. Doing so would make the exception the rule, giving countries sufficient flexibility to restrict the right to access information, turning it from a right to a state's discretion, contrary to the intended purpose of the right.

Exceptions to the right to access information should not, under any circumstances, include all government institutions and public bodies. There are some institutions or public bodies for which there is no conceivable threat of disclosing all of their information, such as local authorities, for example.

Local authorities are primarily responsible for caring for the affairs of their constituents within their geographical jurisdiction, and to achieve decentralization in state administration. Therefore, logically and rationally, it is not conceivable that they possess information related to public safety or threats to national security.

The same applies to service facilities that have been established to achieve the public good and serve members of society. It is not expected that they will use the confidentiality of such information as an excuse for not disclosing it for any purpose. Saying otherwise opens the door to evasion of hiding aspects of waste of public rights and freedoms, and undermines the right to access information.

One of the essential elements of the legal definitions of the right to access information is to facilitate procedures for individuals to access information. This can be done by specifying in comprehensive legislation which entities are responsible for

providing information to citizens, the levels and agencies to which requests can be made, the deadlines for obtaining the information, and the authorities to which complaints can be filed if the requested information is not provided.

Another crucial element that must be included in the definition of the right to access information is the principle of reducing the costs necessary to obtain the information from the relevant authorities. It is not practical to provide the right to access information while imposing fees that exceed the value of the right itself.

The person seeking information from the relevant authorities is doing so to enhance their role as a citizen in monitoring state institutions and the information that belongs to them, which is the right of the public to access and request a copy of.

In this regard, one aspect of Islamic jurisprudence sees the right to access information as "one of the most fundamental human rights. The government is only an agent of the people and individuals in managing public affairs, and it is not the agent's right (government) to hide anything from the principal (the people). Therefore, all information must be made available to those dealing with the administration so that they can hold it accountable in case of any wrongdoing"⁷⁶.

In this regard, some aspects of legal jurisprudence see that "the cost of obtaining information held by public bodies should not be so high as to deter people from making requests for access to it"⁷⁷, any other view would essentially empty the right of its content. In this context, we can define the right to access information as the authority of every citizen to obtain any document, regardless of its nature, that constitutes information held

⁷⁶ Rehab Farid Ahmed Mohamed: The right to access information - a comparative study, National Center for Legal Publications, first edition, 2020, Page 50.

⁷⁷ Bilal Al-Barghouthi: The Right to Access Information or Freedom of Information, An-Najah University Library / Al-Haram Al-Jadid, Nablus, Law Development Project Series, Page 11.

by administrative agencies through the competent authority in the state, in case the state has not published it, as limited by the law.

After defining the right to access information in Islamic jurisprudence in this article by outlining its legal definitions and constituent elements, we move on to the third point, in which we discuss the right to access information in international agreements and standards.

Subsection Three: The Right to Access Information in International Conventions and Standards.

At the international level, the United Nations adopted the right to access information as one of the fundamental rights of citizens through the General Assembly in 1946, which stated that "the freedom of access to information is a fundamental human right and the standard by which all freedoms that the United Nations is committed to protecting are measured"⁷⁸. However, the freedom to exchange information was not elaborated on in detail but was enshrined as part of the basic right to freedom of expression, which includes the right to seek, receive, and impart information⁷⁹. This is the direction that the international law on human rights has taken regarding the right to access information, which falls within the broad space of the right to freedom of opinion and expression as a fundamental right.

Regarding the Universal Declaration of Human Rights, it did not explicitly state the right to access information. Still, given the nature of the right to access information

⁷⁸ General Assembly Resolution No. 59 (1), 1946.

⁷⁹ Maimoun Kharat: The right to access information between societal necessity and official dealing after the adoption of the new constitution, Publications of the Moroccan Journal of Public Policies - Human Rights Notebooks series, Issue (1), 2012, Page 75.

as one of the rights included within the freedom of opinion and expression, it can be said that the declaration implicitly recognized the right to access information. Therefore, the Universal Declaration of Human Rights states that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"⁸⁰. Thus, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the right to access information is considered part of the right to freedom of expression, which is the same approach taken by the Palestinian Basic Law in Article (19), which considers the right to access information an integral part of the right to freedom of opinion and expression.

Regarding the International Covenant on Civil and Political Rights, it indirectly addressed the right to access information by affirming the right to freedom of opinion and expression. Thus, it states that":

1. Everyone has the right to freedom of thought, conscience, and religion. This right includes the freedom to have or to adopt a religion or belief of their choice, without coercion.
2. Everyone has the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders, either orally, in writing, in print, in the form of art, or through any other media of their choice..."⁸¹.

⁸⁰ Article (19) of the Universal Declaration of Human Rights.

⁸¹ International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16/12/1966, entered into force on 23/3/1976, pursuant to article 49 of the Covenant.

In this regard, it is noted that "Article 19 of the International Covenant on Civil and Political Rights recognized the right to knowledge and the freedom to exchange information like what was stated in Article 19 of the Universal Declaration of Human Rights in terms of the scope of exercising the right regardless of the type of means used"⁸².

This is within the right to freedom of opinion and expression.

This is evident in General Comment No. 34 on Article 19 of the International Covenant on Civil and Political Rights, issued by the Human Rights Committee in 2011. The comment separated the right to freedom of opinion and expression, which certainly includes the right to access information as one of its components.

Paragraph 18 of the comment refers to the various aspects of the right to access information from public entities, including the media's right to access information, as well as the rights of the public, including minorities, to know decisions that affect them. The aim is to activate the right to access information realistically within the framework of the state, to preserve the rights stipulated in the International Covenant on Civil and Political Rights.

Paragraph 19 of the same comment emphasizes the details of the right to access information, specifically in terms of the proactive dissemination of information, making information understandable and clear, regulating the mechanisms for dealing with the right to access information, including its procedures, timing, fees, cases of refusal, and providing opportunities for appealing and complaining about decisions related to the application of the right to access information.

⁸² Ahmed Ali Al-Laqrani: The Right to Access Information, Dar Al-Nahda Al-Arabiya - Cairo, 2017, Page 69.

Therefore, the principle of freedom of information and access to it is one of the established principles at the international level, and it only clashes with the right to privacy, to a relative extent, as expressed by the Human Rights Committee in General Comment No. 16 on Article 17 of the International Covenant on Civil and Political Rights. The Committee stated in paragraph 7 of the comment that "since all individuals live in society, the protection of private life is necessarily relative. However, the public authorities should not be able to require information relating to the private life of an individual unless the knowledge of it is necessary for the well-being of society as understood under the Covenant. Therefore, the Committee recommends that States indicate in their reports the laws and regulations that govern cases of authorized interference in private life".

The International Covenant on Economic, Social, and Cultural Rights also touched upon the right to access information, but in an indirect manner and with much less efficiency than the text on civil and political rights in that Covenant.

Accordingly, the International Covenant on Economic, Social states that:

1- The States Parties to this Covenant recognize the right of everyone:

- a) To take part in cultural life;
- b) To enjoy the benefits of scientific progress and its applications;
- c) To benefit from the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author.

2- The States Parties to this Covenant undertake to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of their available resources, to achieve progressively the full realization of the

rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

3- The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4- The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and cooperation in the scientific and cultural fields"⁸³.

The American Convention on Human Rights has also recognized the right to access information within the freedom of thought and expression. Accordingly, it states that "every person has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice, by international conventions on the subject."

The exercise of the right outlined in the previous paragraph may not be subject to prior censorship but may be subject to subsequent imposition of liability, which shall be expressly established by law to ensure:

1- Respect for the rights or reputations of others.

2- Protection of national security, public order, public health, or public morals.

The right to freedom of expression may not be restricted by indirect methods or means such as the abuse of government supervision...⁸⁴

⁸³ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16/12/1966, entered into force on 3/1/1976.

⁸⁴ Article (13) of the American Convention on Human Rights, adopted on 22/11/1969.

The United Nations Convention against Corruption has adopted the right to access information and made it available to the public. This can be inferred from Article 1 of the Convention, particularly concerning the purposes of the Convention aimed at enhancing transparency and making information available. The Convention also states that "each State Party shall, by the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration⁸⁵, including about its organization, functioning and decision-making processes, and take measures to facilitate public access to information. These measures may include":

- 1- Adopting procedures or regulations that enable the general public, when necessary, to obtain information on how its public administration is organized and operates, as well as on its decision-making processes, and on decisions and legal instruments that affect the public while giving due consideration to the protection of their dignity and personal data.
- 2- Simplifying administrative procedures, as necessary, to facilitate people's access to the competent authorities that make decisions.
- 3- Disseminating information, which may include periodic reports on the risks of corruption in its public administration"⁸⁶.

And since the State of Palestine has officially joined the United Nations Convention against Corruption, it is therefore bound to facilitate and support the right to access information. This can only be achieved through effective legislation that is in line with international standards and balances the recognition of the right to access information with the public interest and the right to privacy for individuals.

⁸⁵ Abdelli Hamza: The principle of transparency of administrative work and the right of individuals to access information at the national level and international covenants, University of Djelfa, Studies and Research Journal, Volume (11), Issue (2), 2019, Page 85.

⁸⁶ Article (10) of the United Nations Convention against Corruption, 2003.

On the European level, the Council of Europe Convention on Access to Official Documents states that":

- 1- Each Party shall ensure the right of everyone, without discrimination on any ground, to have access, on request, to official documents held by public authorities.
- 2- Each Party shall take the necessary measures in its domestic legislation to implement the provisions of this Convention relating to access to official documents"⁸⁷.

At the African level, the African Charter on Human and Peoples' Rights recognized the right to information and therefore stated":

- 1- Every individual has the right to access information.
- 2- Every person has the right to express and disseminate their ideas within the framework of the law and regulations"⁸⁸.

As for the organization of Article (19)⁸⁹, it has developed a specialized study to establish the right to access information. In this regard, it has identified several principles to regulate this right by extracting the relevant provisions and enriching them with judicial applications. These efforts were crowned by the endorsement of these principles by the

⁸⁷ Article (2) of the Council of Europe Convention on Access to Official Documents of 2009, adopted by the Committee of Ministers on 27/11/2008.

⁸⁸ Article (9) of the African Charter on Human and Peoples' Rights, which was approved by the African Heads of State at their ordinary session No. 18 in Kenya in 1981.

⁸⁹ It is an independent human rights organization that works worldwide to protect and promote freedom of expression. The organization takes its name from Article (19) of the Universal Declaration of Human Rights, which includes freedom of expression, and was established in 1987. The organization identifies itself as the Departments of Treaties and Law.

Read more Article 19 on the electronic link:

[Ar.m.wikipedia.org](https://ar.m.wikipedia.org)

7/10/2022 at 6:15 PM.

UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in 2000.

The right to access information has been legally institutionalized and enshrined in the Commonwealth Principles on Freedom of Information, which has adopted several principles for the right to access information. The most important of these principles is to encourage Commonwealth member states to adopt the doctrine that freedom of information is a legal right that must be implemented.

The organization Access-Info has also developed a framework for the right to access information through several principles, including that the right to access information is a right for every individual without discrimination, especially for information held by government institutions.

In addition, public institutions are committed to providing and disseminating information related to their structure, budget, activities, resources, expenses, and both internal and external affairs, as well as the relationship between state institutions. These principles also identify the procedures and conditions that must be met to effectively implement the right to access information and ensure that constitutional provisions for this right are not simply ink on paper, but are accompanied by adequate procedures for their implementation.

After discussing the nature of the right to access information, we move on to the second section, which are the guarantees and obstacles to the right to access information.

Section Two: Guarantees and Impediments to the Right to Information.

All individual rights must be accompanied by the necessary guarantees to ensure the realization of those rights, including the right to access information. Without the

necessary guarantees, a right becomes a mere text that lacks any practical purpose. Moreover, these guarantees must be consistent with international human rights agreements and standards.

Despite the necessary guarantees for the right to access information, many obstacles are created by states to avoid the implementation of this right. Some of these obstacles are based on established international standards as an "exception" to the right while requiring a "three-part test" to ensure that this exception does not violate international agreements and standards. Other obstacles are simply attempting to avoid this fundamental human right, which is considered a right for society as a whole, namely the right to access information.

To achieve the desired goal of this section, we will divide it into two subsections. In the first subsection, we will discuss the guarantees of the right to access information, while in the second subsection, we will address the obstacles to the right to access information.

Subsection One: Guarantees of the Right to Obtain Information.

The right to access information finds its primary legal guarantees in the constitutional recognition of this right through explicit and clear provisions, such as in the Moroccan Constitution, or through indirect provisions that are related to the right to freedom of opinion and expression, following international conventions, as is the case in the Palestinian Basic Law (Constitution), the Jordanian Constitution, and others.

The inclusion of a constitutional provision recognizing the right to access information is considered one of the strongest legal guarantees for this right (the principle of the supremacy of the Constitution), because such a provision affords legal protection

at the highest level in the hierarchy of legal norms and lower level norms are not allowed to violate it, subject to the guarantees provided for by constitutional rules, such as the power to declare unconstitutional any legislation that violates constitutional rules, including the right to access information. It is worth noting that the Palestinian Constitution imposes accountability and compensation for violations of public rights and freedoms, including freedom of opinion and expression, of which the right to access information is an integral part.

In this regard, the Moroccan constitutional legislator explicitly stated the right to access information, which constitutes an important guarantee for the implementation of that right. The constitutional text came as follows:"

1- Citizens, both male, and female, have the right to access information held by public administration, elected institutions, and bodies responsible for public services.

2- The right to access information may only be restricted by law to protect national defense, internal and external state security, the private lives of individuals, as well as the prevention of infringement upon fundamental freedoms and rights as stipulated in this Constitution, and protection of sources of information and the areas defined by law with precision"⁹⁰.

The constitutional guarantees of the right to access information were "consolidated in Morocco through the enactment of the Press and Publication Law, which recognized the right of journalists and media entities to access sources of news and information from various sources"⁹¹.

⁹⁰ Chapter (27) of The Moroccan Constitution was issued in 2011.

⁹¹ Abdelkader Mahdawi: Constitutional protection of the right to access information in the Maghreb countries (Algeria, Morocco, and Tunisia), Journal of Legal and Political Sciences, Issue (14), 2016, Page 104.

In this regard, it is worth noting that "the inclusion of this right in the constitutional document, alongside other constitutionally protected rights, and the allocation of a special chapter to it, confirms the importance that the constitutional legislator attaches to it, believing in the role of this right in establishing the principles of transparency and integrity in the management of public affairs"⁹².

In the Tunisian constitutional context, to ensure constitutional guarantees of the right to access information, the constitution stipulated that "the state guarantees the right to information and the right to access information"⁹³.

The constitutional embodiment of the right to access information in Tunisia necessitated the commitment of legislative bodies to issue laws regulating the right to access information, which culminated in the enactment of the Basic Law No. 22 of March 24, 2016, which regulated the principles of optimal enjoyment of the right to access information and its specific procedures.

The Algerian legislator enshrined the right to access information constitutionally as a guarantee of the right to access information, stating that "the right to access information, documents, statistics, and their transmission is guaranteed to citizens, and the exercise of this right cannot infringe upon the private lives and rights of others, the legitimate interests of institutions, and the requirements of national security. The law determines the manner of exercising this right"⁹⁴.

Constitutional guarantees of the right to access information entail the prohibition of enacting any legislation that contradicts this right, under penalty of being declared

⁹² Hassan Farhan: News between the Right to Access Information and the Protection of the Private Lives of Individuals and Institutions, without a publishing house, Page 3.

⁹³ Chapter (32) of the The Tunisian Constitution of 2014.

⁹⁴ Article (51) of the The Algerian Constitution was issued on March 7, 2016.

unconstitutional and rendering its legal effects null and void for violating constitutional principles. This is where the constitutional protection of this right lies, by including it in constitution.

In the Palestinian context, the constitutional texts referred to freedom of opinion and expression, which cannot be effectively enforced unless the right to access information is also constitutionally guaranteed. The constitution stipulated that "freedom of opinion shall be inviolable, and every person shall have the right to express his opinion and publish it by word, writing, or other means of expression or art, subject to the provisions of the law"⁹⁵.

The amended Palestinian Basic Law (Constitution) affirmed the right to freedom of opinion and expression in Article 19, which stated that "freedom of opinion shall be inviolable, and every person shall have the right to express his opinion and publish it by word, writing, or other means of expression or art, subject to the provisions of the law." As previously stated, the right to access information is an integral part of freedom of opinion and expression in international human rights standards.

Palestine acceded to the International Covenant on Civil and Political Rights without reservations in April 2014, and the Covenant in Article 19 affirmed the right to freedom of opinion and expression as a fundamental human right. The Committee on Human Rights (the Committee on the Covenant) clarified in General Comment No. 34 on Article 19 of this Covenant the obligation of states to respect and commit to the right to access information as a right for society as a whole, as previously mentioned in international standards on this matter.

⁹⁵ Article (19) The Palestinian Basic Law was amended in 2005.

The Palestinian Basic Law affirmed in Article 32 that "any infringement upon personal freedoms, privacy, or any other public rights and freedoms guaranteed by the Basic Law or the law constitutes a crime not subject to a statute of limitations for criminal or civil claims arising from it, and the national authority shall ensure fair compensation for those who suffer harm."

Since Article 19 of the amended Palestinian Basic Law (Constitution) affirmed the constitutional protection of the right to freedom of opinion and expression, which includes the right to access information, by the international agreements and standards that Palestine has committed to, any violation of this fundamental human right of access to information constitutes a "constitutional crime" in the Basic Law that requires accountability and compensation for those who have suffered harm as a result of being denied their basic right to access information. Any legislation or ordinary provision that violates the Palestinian Constitution is null and void and must be repealed.

Therefore, the Palestinian legislature is obligated, when enacting legislation related to information, to adopt a comprehensive perspective based on the principle of free access to information from its sources without restriction or condition, except as required by necessity and subject to limited exceptions, by international standards, under penalty of being declared unconstitutional.

Accordingly, the Palestinian legislator "amended Article 25 of the Palestinian Constitutional Court Law to read as follows:

1. The Constitutional Court shall have the authority, in the exercise of its jurisdiction, to review and rule on the constitutionality of any provision in a law, decree, or regulation that is submitted to it in connection with a dispute brought before it, following the procedures established for preparing constitutional claims.

2. If the Constitutional Court rules that a law, decree, regulation, or system is unconstitutional, the legislative authority or relevant agency shall amend that law, decree, regulation, or system by the provisions of the Basic Law.

3. If the Constitutional Court rules that a law, decree, regulation, or system is unconstitutional, it shall be considered prohibited from the application, and the entity that enacted it shall rectify the situation in accordance with the provisions of the Basic Law"⁹⁶.

One of the guarantees that ensure the right to access information is the enactment of laws specifically related to this field, which contain provisions that establish and reinforce individuals' right to access information, whether through special laws related to freedom or through the enactment of a law specifically dedicated to this right in all its forms.

Therefore, "the constitutional provision in itself is not sufficient to ensure an atmosphere in which the freedom of information can flourish, and an independent law must be enacted to regulate the freedom of information and review all other legislation that criminalizes the dissemination of information"⁹⁷. Currently, approximately one hundred countries have enacted laws guaranteeing the right to access information.

Legal regulations themselves must play a role in determining the guarantees that ensure the right to access information, including the adoption of the principle of internal administrative appeal to enable people to exercise their right to access information in case of obstruction or hindrance by official authorities in violation of the Palestinian Basic Law, the agreements to which Palestine has joined, and relevant standards.

⁹⁶ Article (13) of the Law No. 19 of 2017 amending Law No. 3 of 2016 on the Supreme Constitutional Court.

⁹⁷ Ziad Aqel: Freedom of information in Egypt: constitutional and legislative frameworks, Al-Ahram Foundation, Volume (16), Issue (63), 2016, Page 95.

Appealing in this regard is "a right for both the applicant and the administrative authority issuing the decision, as it is the right of the applicant to apply the principle of legality and the obligation to ensure that the administration's decisions comply with the law. On the other hand, it is the right of the administrative authority to review its own decisions if they violate the law, as the public interest requires correcting situations that are contrary to the law"⁹⁸.

In this context, a citizen may find that he or she has submitted a request for information within the legal guidelines and procedures, but the request has been rejected or ignored outside the expected timeframe for obtaining the information.

In such a case, the information requester has the right to file an official complaint to the head of the entity responsible for disclosing the information to respond to their request and provide them with the information they requested within a certain timeframe. They also have the right to appeal to the competent judicial authority to enable them to exercise this basic human right.

In this regard, the Right to Access Information Law for the year 2005 was introduced, which was approved by the first Palestinian Legislative Council for public debate, but its approval and implementation procedures were not completed. The General Commission for Information was established, and the law stated that "an office for the General Commissioner for Information shall be established under the provisions of this law, which shall enjoy legal personality and the necessary independence to carry out its work, and a

⁹⁸ Kabour Saadani: The right to access information in light of the draft law 31.13, Al-Manar Journal for Legal and Administrative Studies, Issue 19, 2017, Page 149.

special budget shall be allocated to the office within the general budget of the Palestinian National Authority"⁹⁹.

The Palestinian bill emphasized the "independence" of the General Commission for Information to avoid any influence from official entities and to enable it to perform its task of effectively verifying the flow of information, and following up on any problems or obstacles preventing citizens from exercising their basic right to access information. The independence of this commission (General Commissioner for Information) is a crucial guarantee for the flow of information and the preservation, respect, and enforcement of this right.

The bill assigned the General Commissioner several important powers, including the power to decide on appeals received regarding the failure of entities to disclose available information. The law stated that "The office shall be considered an appellate body for all those who have been denied their request for information, and the office aims to ensure the implementation of this law and achieve its intended objectives, and for this purpose, it has the following powers:"

- 1- Developing, organizing, and implementing programs, plans, and policies related to defending individuals' right to access and obtain information.
- 2- Educating and raising awareness among citizens about the importance of the right to access information and the positive results of exercising it on the individual, the community, and the state levels.
- 3- Contributing to training employees and officials in public institutions on how to enable individuals to access information and the importance of doing so.

⁹⁹ Article (29) of the draft law on the right to access information.

4- Monitoring violations, publishing reports and studies that include obstacles to exercising the right to access information, and how to overcome them"¹⁰⁰.

The bill specified the cases that are subject to appeal before the General Commissioner for Information, and therefore it stated that "the office shall be considered "an appellate body for all those who:

- 1- Refusal of their request for access to information.
- 2- Imposition of high fees on their request.
- 3- Refusal of their request for information in an alternative format.
- 4- Extension of the period necessary to respond to their request in violation of the provisions of Article (13) of this law¹⁰¹.
- 5- Referral of their request to more than one institution without their approval.
- 6- Any other cases accepted by the General Commissioner for Information"¹⁰².

The Palestinian 2005 bill limited the timeframe for appeal before the General Commissioner for Information to a period not exceeding 30 days from the date of the administration's refusal to provide the information requested, or from the date of the action subject to appeal. The bill stated that "the appeal must be submitted to the office within 30 days from the date of the request's rejection, or from the date of the institution's action that the applicant wishes to appeal"¹⁰³.

¹⁰⁰ Article (30) of the draft law on the right to access information.

¹⁰¹ Article (13) of the draft stipulates that "the competent employee must respond to the request within 7 days from the date of its submission, and the employee may extend this period once and for a period not exceeding 7 days, if the request includes a large number of information, or access to The information requires consulting a third party or other public institution, and failure to respond during that period is considered a rejection of the request."

¹⁰² Article (32) of the draft law on the right to access information.

¹⁰³ Article (33) of the draft law on the right to access information.

However, the Palestinian legislator granted the General Commissioner for Information a long period to decide on appeals, making it three months, which is excessive and diminishes the value of the right, and the importance of information, especially in this digital age. Therefore, the appeal becomes a way to avoid disclosing information.

Thus, the Palestinian 2005 bill stated that "the office must respond to the appeal within a period not exceeding three months from the date of its submission, and upon receiving and accepting the appeal, the office must immediately send a letter to the official response in the institution that refused the request for information, informing them of the appeal and asking for the reasons for the refusal"¹⁰⁴. This period does not correspond to the importance and speed of information in the digital age, where delays and procrastination lead to the loss of the significance and value of the information over time.

As for the Moroccan legislator, it stated that "the information requester has the right, in case of not receiving a response to their request or not being responded to, to file a complaint to the head of the institution or the concerned authority within twenty working days from the expiry date of the legal deadline designated for responding to their request, or from the date of receiving the response. The head of the institution or the mentioned authority must study the complaint and inform the concerned party of the decision taken within fifteen days from the date of receiving it"¹⁰⁵.

The Moroccan legislator has directly provided for the administrative complaint guarantee through its legal texts by allowing the applicant for information to submit a request to the head of the institution. The head of the department is obliged to respond to the request within a specified period.

¹⁰⁴ Article (34) of the draft law on the right to access information.

¹⁰⁵ Article (30) of the law on the right to access information.

The Moroccan legislator did well by specifying the response time to the complaint, and anything beyond that opens the door for complaints to become a repository for requests for information without responding to any of them, whether for legitimate reasons or otherwise.

The Tunisian legislator has also adopted the same guarantee, stating that "if the access requester rejects the decision taken regarding their request, they can complain with the relevant structure's head within a maximum period of twenty (20) days following notification of the decision. The head of the relevant structure must respond as soon as possible, not exceeding a maximum of ten (10) days from the date of submitting the complaint. Failure of the head of the relevant structure to respond within this period is considered an implicit refusal"¹⁰⁶.

Among the guarantees provided by Moroccan law for obtaining information is the right to appeal to the Right to Information Commission if the direct administrative complaint is rejected. The law states that "the information requester has the right, within a period not exceeding thirty days following the expiry of the legal deadline for responding to the complaint addressed to the head of the institution or authority, or from the date of receiving the response to this complaint, to appeal to the Right to Information Commission. The Commission must study the complaint and inform the concerned party of its outcome within a period of thirty days from the date of receiving it"¹⁰⁷.

Therefore, it can be seen that the Moroccan legislator has provided various forms of guarantees for the right to access information, through the plurality of the bodies to which

¹⁰⁶ Chapter (29) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

¹⁰⁷ Article (20) of the Moroccan law related to access to information.

complaints can be submitted when an individual's request for information is rejected by the appropriate authorities.

However, we see that the aforementioned provision has extended the legal deadline for responding to this type of complaint and granted the relevant authority thirty days to respond to the complainant, which is an unnecessary extension, especially in light of the legal nature and utmost importance of the right to access information in the digital age as a right for the entire society.

In Tunisia, the same guarantee has been adopted, and therefore, it states that "if the access requester rejects the complaint decision taken by the head of the structure or fails to respond within a period of ten (10) days from the date of receiving the request, they can appeal this decision to the Access to Information Authority referred to in Article 37 of this law, within a period not exceeding twenty (20) days from the date of receipt of the rejection decision issued by the head of the structure or from the date of implicit rejection. The Authority shall decide on the appeal as soon as possible, not exceeding a maximum of forty-five (45) days from the date of receipt of the appeal request, and its decision shall be binding on the relevant structure"¹⁰⁸.

One of the guarantees that ensure the right to access information is judicial protection, through resorting to the judiciary to issue a judicial ruling that obligates the competent authority to disclose the information that it previously refused to disclose.

The judiciary is the ultimate authority in ensuring and consolidating public rights and freedoms, regardless of their nature, including the right to access information. This necessarily requires the existence of an independent and impartial judiciary that has no authority over it except for the conscience of justice.

¹⁰⁸ Chapter (30) of the Tunisian Basic Law No. 22 of 2016 relates to the right to access information.

In Morocco, the guarantee states that "the information requester has the right to appeal to the administrative court against the decision of the head of the institution or the relevant authority within a period of sixty (60) days from the date of receipt of the response from the Right to Information Commission regarding their complaint or the date of expiry of the legal deadline for responding to this complaint"¹⁰⁹.

In application of this, the Moroccan administrative judge ruled that "the administration's refusal to provide reasons for the exclusion from the contract, in addition to violating the contractual obligation to disclose and inform about the progress of the contract, constitutes a legal violation of Article 27 of the Constitution, which stipulates that citizens have the right to access information held by the public administration, and the equal opportunities and the defense rights enshrined constitutionally and the rules of intent in the contract. Considering that the request is not related to the constitutional exceptions that restrict the right to information, and given its urgent nature, which is based on the immediate consequences and effects of the exclusion from the contract that are not proportional to the procedures of Article 47 of the Decree regulating the conditions and forms of public procurement, it makes it dependent on a basis that requires a response"¹¹⁰. However, despite the importance of this guarantee, the judiciary itself is not obliged to decide on the lawsuit, regardless of its subject matter, including lawsuits related to the right to access information, within a specific timeframe, which diminishes the effectiveness of this guarantee.

¹⁰⁹ Article (21) of the Moroccan law related to access to information.

¹¹⁰ Judgment of the Administrative Court in Rabat in File No. 322/2013 dated 4/17/2013.

The researcher believes that the Moroccan legislator should have subjected the judicial guarantee to specific deadlines and timeframes within which decisions must be made on such lawsuits and judgments issued, thereby limiting legal deadlines.

In Tunisia, the administrative court has made a guarantee for the right to access information by "allowing appeals against decisions of the Access to Information Authority, whether negative or positive, within a period of 30 days from the date of notification"¹¹¹.

It is worth noting that the Tunisian legislator has set a shorter period for appeals than the Moroccan legislator, without diminishing the judicial guarantee for the right to access information. We support the idea of setting specific timeframes for various types of requests to emphasize the importance of time and the need for swift action in accessing information. However, the Tunisian legislator did not limit the administrative judiciary to specific deadlines for ruling on requests for access to information, which is a shortfall. It would have been preferable, given the existence of a special law regulating the right to access information, for the competent court to be limited to specific deadlines for ruling on such lawsuits.

In Yemen, resorting to the judiciary as a guarantee for accessing information has been established. It states that "the applicant whose request has been rejected by the General Commissioner's office may apply to the competent court locally, which shall consider the matter and issue its judgment on an urgent basis within a period not exceeding 30 days. The primary judgment is considered final and enforceable against the

¹¹¹ Chapter (31) of the Tunisian Basic Law No. 22 of 2016 relates to the right to access information.

entity within a period not exceeding seven days. In the event of a lawsuit being dismissed, the applicant may appeal within the time frame specified by law"¹¹².

In this regard, we find that the Yemeni legislator was more precise and capable of establishing the judiciary as a guarantee for the right to access information through several criteria. Firstly, it considers such requests as urgent lawsuits, in addition to including judgments issued in this regard under the expedited access to judicial decisions, even if they are subject to appeal. Finally, it limits the court to a specific period for ruling on such requests, which is a reasonable timeframe.

It should be noted that the Yemeni legislator did not specify whether appeals in this area should be considered urgent or through regular procedures. However, the researcher believes, based on the legal effect of the appeal, that appeals related to requests for access to information should be considered through expedited procedures.

In Palestine, it should be noted that the draft law on the right to access information did not address the jurisdiction of the judiciary in such lawsuits, similar to other legislation, which is a gap that must be addressed before it is approved. This requires legislative measures that ensure the prompt consideration of complaints by the General Commissioner for Information and the prompt response from the relevant official authorities. It also requires expedited judicial rulings to ensure that citizens enjoy this fundamental right efficiently and effectively, particularly in this digital age, where information is of utmost importance and cannot tolerate delay or procrastination, which diminishes its value and importance.

However, upon reviewing the provisions of the draft law, we find that the competent official is obliged, in case of rejecting a request for access to information, to provide the

¹¹² Article (32) of the Law No. 13 of 2012 on the right to access information.

information requester with a written statement explaining the reasons for the rejection. Therefore, it stipulates that "if the request is rejected, the competent official must provide the requester with a written response explaining the reason for the rejection. The reason for rejection shall not be withheld:

- 1- Information is not in the possession of the institution.
- 2- The requested information falls within the exceptions specified in this law"¹¹³.

Since the decision issued by this office regarding access to information constitutes an administrative decision subject to appeal before the Palestinian Administrative Court, based on the general rules of judicial jurisdiction in Palestine.

The Palestinian legislator has stipulated that: "1- The Administrative Court shall have exclusive jurisdiction over the following... the rejection or failure of the administrative authority to make any decision that should have been made in accordance with the provisions of laws or regulations..."¹¹⁴.

The Palestinian Administrative Court has the authority to rule on urgent requests that the information seeker deems necessary to submit, in accordance with the general rules of legislation applicable to administrative courts. Therefore, it is stipulated that "Administrative courts have jurisdiction over urgent matters submitted to them regarding cases falling within their jurisdiction, including temporarily suspending the appealed decision if the Administrative Court finds that the consequences of its implementation cannot be remedied..."¹¹⁵.

¹¹³ Article (18) of the draft law on the right to access information.

¹¹⁴ Article (20) of the Decree-Law No. (41) of 2020 regarding administrative courts.

¹¹⁵ Article (21) of the Decree-Law No. (41) of 2020 regarding administrative courts.

Regarding the legal deadline for appealing this decision to the competent court, the general rules stipulate that the appeal period for administrative decisions is 60 days from the day following the date of notifying the information seeker of the rejection of their request. The appeal period is not limited by the passage of time if the decision to reject the information request is flawed and invalid.

Therefore, the Palestinian legislator has stipulated that "the lawsuit shall be brought before the Administrative Court by a summons presented to it within sixty days from the day following the date of notifying the individual of the administrative decision... in the event of rejection or failure of the competent authority to make any decision that should have been made in accordance with the provisions of laws or regulations, the deadline for filing the lawsuit stipulated in paragraph (1) of this Article shall begin to run thirty days after the date on which the individual submitted a written request to that authority to make the decision... the lawsuit may be filed before the Administrative Court to appeal invalid administrative decisions at any time without limitation..."¹¹⁶.

Appealing the decision issued by the competent court in case of rejection also constitutes another judicial guarantee to obtain the information, through the principle of litigation escalation and the possibility of rectifying the error of the first instance court by the appellate court.

The decisions issued by the administrative court regarding the aforementioned matter are subject to appeal before the Supreme Administrative Court, as it is stipulated that "the Supreme Administrative Court shall have jurisdiction over appeals filed against all final

¹¹⁶ Article (23) of the Decree-Law No. (41) of 2020 regarding administrative courts.

judgments issued by the administrative court, and shall consider them from both objective and legal aspects"¹¹⁷.

The Palestinian legislator did well when it made the Supreme Administrative Court an appellate body on the decisions of the administrative courts from both objective and legal aspects, which consolidates the right to litigation at two levels, especially since the decisions of the former High Court of Justice were final and not subject to appeal.

It is worth noting that the period for appealing decisions of the administrative court is thirty days, whether the decision is to reject obtaining the information or not. Accordingly, it was stipulated that "the appeal shall be submitted to the Supreme Court within thirty days from the day following the date of issuance of the administrative court's judgment if it was attended, and from the day following the date of its notification if it was attended virtually"¹¹⁸.

It is also worth mentioning that the Palestinian legislator did not require the appeal of administrative decisions, including the appeal of the decision to obtain information, to suspend the implementation of the decision. Rather, those judgments are subject to immediate enforcement unless the court decides otherwise. Therefore, if the Public Prosecution appeals the decision of the administrative court to cancel the decision to refuse to provide the information, the appeal does not suspend the implementation of the decision, and the employee must provide the applicant with the information unless the court decides otherwise.

Accordingly, the Palestinian administrative legislator stipulated that "filing an appeal before the Supreme Administrative Court does not require the suspension of the appealed

¹¹⁷Article (38) of the Decree-Law No. (41) of 2020 regarding administrative courts.

¹¹⁸ Article (39) of the Decree-Law No. (41) of 2020 regarding administrative courts.

judgment unless the court decides otherwise, with or without a guarantee, based on the appellant's request"¹¹⁹.

It should also be noted that the Palestinian administrative judiciary has become a judiciary of annulment and compensation, provided that the compensation claim is related to unlawful decisions. This means that the compensation claim must be raised along with the annulment claim to accept the compensation claim.

The Supreme Administrative Court considers the appeals submitted to it through oral arguments, and the Palestinian legislator did well in this regard. However, it excluded from the appeal proceedings the appeals related to urgent and expedited decisions, which is unfair as the principle is to allow for appeal proceedings and exceptions should be made with caution.

Accordingly, the Palestinian legislator stipulated that:"

1- The Supreme Administrative Court considers appeals submitted to it through oral arguments, except appeals related to urgent and expedited decisions or if the appeal relates to a legal point, and the court may decide otherwise.

2- The Supreme Administrative Court begins considering the appeal on the day it determines, and after hearing the arguments of the parties, it issues its judgment by the provisions of this decision by law"¹²⁰.

It is worth noting that the Palestinian legislator instructed the administrative court to start hearing the case on the day it specifies and to issue a verdict after hearing the pleadings. However, no date was set for the first session, whether it would be within a week or a month, and no time frame was specified for resolving the case.

¹¹⁹ Article (41) of the Decree-Law No. (41) of 2020 regarding administrative courts.

¹²⁰ Article (44) of the Decree-Law No. (41) of 2020 regarding administrative courts.

About the lawsuit related to the right to access information, deadlines have a significant impact on reviving confidence in the judiciary that decides on cases within a reasonable period. However, if the normal procedures and notifications are delayed between sessions by more than a month or two, this undermines the judicial guarantee of the value of obtaining information.

One of the guarantees that enshrine the right to access information is the imposition of penalties on those who refuse to disclose information despite there being no legal impediment to doing so. In this regard, the researcher believes that criminal legislation has punished the crime of disclosing secrets but has not criminalized withholding information. Perhaps this is due to the novelty of the right to access information compared to criminal legislation that has been known since ancient times.

The policy of criminal legislation should criminalize deception in obtaining information by punishing anyone who has been proven to have provided information in a manner that is contrary to the information in their possession when there is evidence of bad faith, and the purpose of this is to focus on the individual's right to access information.

In this regard, we find that the Moroccan legislator has contented himself with disciplinary sanctions for officials who refuse to carry out their duties related to disclosing information, based on the argument that the actions of the competent official constitute a disciplinary error that only warrants disciplinary punishment.

Here, the researcher believes that although the person responsible for disclosing the information is an employee, the mistake he commits is more severe than the mistake of an employee who violates the justifications of his job. The right to access information and its concealment affects the entire society, and there is no desired goal in covering up and delaying the employee's work except as a nucleus for the destruction of the state and the

erosion of public confidence in the state, especially since the right to access information is a right enshrined by the Moroccan constitution.

The Moroccan legislator has overlooked several facts that should have been at least disciplined, such as delaying the necessary procedures to obtain information and not criminalizing the invention of tricks to circumvent this right, such as increasing the fee for requests for information.

The Moroccan legislator has not disciplined the administrative bodies responsible for voluntarily withholding information, which is a shortcoming since the primary responsibility of administrative bodies is to proactively disclose information. Therefore, the failure to disclose such information should also be criminalized.

In Tunisia, the legislation has provided for both criminal and disciplinary penalties as a guarantee for the right to access information. It states that "any person who deliberately obstructs access to information in structures subject to the provisions of this law shall be liable to a fine of between five hundred (500) dinars and five thousand (5000) dinars. Anyone who deliberately destroys information illegally or induces someone else to do so shall be punished with the penalty provided for in Article 163 of the Criminal Code"¹²¹.

The researcher believes that the Tunisian legislator did the right thing by criminalizing all forms of obstruction of access to information, including withholding information or delaying its delivery, and all forms of obstruction in obtaining information.

In addition to criminal penalties, the Tunisian legislator has not overlooked disciplinary penalties for those responsible, as they are public employees. Therefore, the legislation states that "in addition to the penalties stipulated in Article 57 of this law, any public

¹²¹ Chapter (57) of the Tunisian Basic Law No. 22 of 2016 relates to the right to access information.

official who does not respect the provisions of this basic law shall be subject to disciplinary action in accordance with the legislation in force"¹²². The Palestinian legislator needs to follow these legislative developments in Tunisian legislation during the review and decision-making process for the Palestinian Right to Information Law, which has been delayed for many years in violation of the basic law and the obligations of the State of Palestine under international agreements on the right to access information. The importance of enacting this law cannot be overstated.

Duplication of criminal and disciplinary penalties cannot be considered as double jeopardy, as the person in their official capacity must be penalized both criminally and disciplinarily if they violate the requirements of their job in various actions, including their failure to implement laws related to the right to access information.

One of the guarantees in the field of the right to access information is the procedures outlined by legislation regulating this right and the deadlines set for responding to requests by the relevant administration. Some scholars believe that "the procedures for obtaining information are procedural requirements imposed on the administration, through which the public can know what the administration is doing and ensure the citizen's right to knowledge, understanding, monitoring, and evaluating its decisions. These mechanisms are distributed in the formal procedures for submitting the request, the time limits for responding to the request, and the cost. Information is obtained based on a request submitted by the person concerned according to a model prepared by the committee responsible for exercising the right to access necessary information"¹²³.

¹²² Chapter (58) of the Tunisian Basic Law No. 22 of 2016 relates to the right to access information.

¹²³ Mohamed Ali Al-Rakkaki: The right to access information, *Journal of Law and International Business*, Issue (23), 2019, Page 137.

One of the guarantees for optimal enjoyment of the right to access information is "the proactive disclosure of information. In this regard, it can be said that proactive disclosure of information opens up communication between the state and its citizens regarding its activities and decisions. It also contributes to enlightening public opinion by providing information that enables them to open discussions about public affairs and to hold accountable and monitor the performance of the state, local authorities, public institutions, and bodies. Moreover, proactive disclosure will save public administrations and institutions from multiple and frequent requests"¹²⁴.

In the Palestinian context, the Right to Information Bill stipulates that "public institutions are required to publish annual reports that include:"

1. Administrative information about the workings of the public institution, including costs, objectives, audited accounts, rules, and accomplishments.
2. Procedures by which individuals can become acquainted with the public institution's general policies and specific projects.
3. Types of information that the public institution retains and the circumstances under which it retains them.
4. The content of any decision or policy that may affect the public and the reasons for making the decision and the objectives sought.
5. Any other information deemed necessary for publication by the General Commissioner"¹²⁵.

¹²⁴ Rachida Badq: The right to access information in Morocco: a reading of regulatory law number 31.13, Publications of Legal Notebooks Magazine - Administrative Notebooks series, Issue (5), 2018, Page 94.

¹²⁵ Article (7) of The draft law on the right to access information.

In Lebanon, the principle of proactive disclosure of information has been adopted as a guarantee for the right to access information. Accordingly, the legislation states that "the administration must publish a ruling on its website in a searchable, downloadable format containing the following materials and information:

- Decrees, decisions, instructions, circulars, and memoranda that provide an interpretation of laws and regulations or have a regulatory nature must be published on the administration's website in a searchable, downloadable format within fifteen days of their issuance. Publication in the official gazette, as well as on the administration's website, is required. Additionally, all such legislative and regulatory materials must be published in an electronic format available within a maximum period of one year from the date of the issuance of this law.

- In accordance with the provisions of Article (5) of this law, all operations involving the disbursement of public funds exceeding fifty million Lebanese pounds, or any of its installments, must be published within one month of their completion. The publication must include the following information: the value of the disbursement, the payment method, the purpose of the disbursement, the beneficiary entity, and the legal document justifying the disbursement, such as tenders, contracts by mutual agreement, and the implementation of judicial decisions.

Salaries and employee compensation are exempt from the provisions of this article"¹²⁶.

The researcher believes that the mandatory element of publishing electronically in the specified format, according to the Lebanese legislator, represents a qualitative leap in the desire to keep up with development and ensure optimal access to information. However, the exemptions provided are completely unjustified, whether it is the minimum amount

¹²⁶ Article (5) Law No. 333 amending Law No. 28 of 10/2/2017 on the right to access information.

of money that must be spent to warrant publication or the exemption of salaries from disclosure. What is the purpose of this exemption, especially since salaries are determined according to laws and regulations?

It should be noted that the right to access information is a comprehensive right that cannot be restricted by a minimum or maximum amount of money. The right to access information cannot be restricted except in the narrowest of circumstances, and for purposes related to the existence and public security of the state, not for expenditures that may constitute a source of administrative corruption.

In Morocco, the legislation regulating the right to access information has adopted the principle of proactive disclosure as a guarantee for the right to access information. Accordingly, the legislation states that "each institution and authority concerned, within the limits of its jurisdiction, must, to the extent possible, publish the maximum amount of information it possesses that does not fall within the exceptions provided for in this law by all available means of publication, particularly electronic means, including the National Portal of Public Data, especially information related to the following:"

- Agreements that have been initiated for accession or approval.
- Legislative and regulatory texts.
- Draft laws.
- Draft financial laws and accompanying documents.
- Proposals for laws submitted by members of parliament.
- Budgets of local authorities, accounting records, and financial information related to their management and financial situation.
- The tasks of the concerned institution or authority, its administrative structures, and the necessary information for contacting it.

- The systems, procedures, policies, and manuals used by the institution or authority's employees or users in performing their duties.
- The list of services provided by the institution or authority to beneficiaries, including lists of documents, data, and information required to obtain a service, an official administrative card, and related electronic services.
- The rights and obligations of beneficiaries towards the institution or authority concerned and the available complaints procedures.
- Conditions for granting licenses, permits, and exploitation licenses.
- Detailed results of various polling stations.
- Expected programs for public procurement and their results, if completed, their recipients, and their amounts.
- Recruitment competition programs, professional exams, and announcements related to their results.
- Announcements regarding the opening of applications for filling positions of responsibility and senior positions, the list of accepted candidates for the competition, and its results.
- Reports, programs, bulletins, and studies available to the institution or authority.
- Economic and social statistics.
- Information related to companies, especially those held by the Central Commercial Registry Services.
- Information that ensures fair competition and is reasonable"¹²⁷.

¹²⁷ Article (10) of Dahir No. 15-18-1 issued on 22/2/2018 implementing Law No. 13-31 on the right to access information.

After discussing the guarantees that ensure the right to access information, including constitutional, legal, judicial, and administrative guarantees, with their complaints and administrative court procedures, in addition to the criminal guarantee represented by punishment, we move on to the second demand, where we will explain the obstacles that hinder the right to access information and research in it. This will be the subject of our study in the second demand under the title "Obstacles to the Right to Access Information.

Subsection Two: Obstacles to the Right to Access Information.

Both in theory and practice, general rights and freedoms, including the right to access information, are hindered by numerous obstacles that prevent their optimal enjoyment and sometimes even prevent access to them altogether.

Despite the existence of international agreements related to the right to access information, they have created a situation in which most local legislation falls short and is inconsistent with their aspirations by recognizing those agreements governing the right to access information.

Obstacles to the right to access information can be legal obstacles, either through the existence of legal provisions that prohibit the publication or through provisions that criminalize prohibition or the lack of essential requirements for such legislation to access the right to information.

In practical terms, challenges may be found in the security policies of some countries, which make individuals almost afraid to take a step towards requesting information necessary for their work, given the consequences of such a request if they decide to make it, including malicious charges aimed at forcing them to refrain from claiming that right.

With regard to legal obstacles, the concept of professional secrecy in public service is considered the first legal obstacle that hinders the right to access information, as all legislation agrees to consider it a limitation and condition for the exercise of public service.

In this regard, jurisprudence has defined professional secrecy as "an event or quality whose scope of knowledge is limited to a certain number of people if there is a public interest recognized by the law to keep knowledge of it confined to this scope"¹²⁸.

Others have defined it as "the state's endowment of an event or thing with confidentiality so that it must remain hidden from those who are not tasked with safeguarding or using it unless it is decided to allow it. Another definition considers it "a quality attributed to something related to the elements of the defense of the country, which the law assigns to individuals who are responsible for its preservation and confidentiality and prevent its access to others"¹²⁹.

Some aspects of jurisprudence justify the state's policy of criminalizing the disclosure of professional secrecy by claiming that "maintaining secrets guarantees the effectiveness of administrative activity and the independence of the administration in its work to ensure the achievement of the public good. The administration sees that individuals' access to certain matters may threaten their ability to achieve its goals effectively. Therefore, it is not permissible for the administration to be transparent to all individuals with different

¹²⁸ Mahmoud Naguib Hassani: Explanation of the Penal Code - Special Section - Crimes Against Persons, Dar Al-Nahda Al-Arabiya, Cairo, 1978, Page 144.

¹²⁹ Hussein El-Noury: Bankers' Professional Secrecy in Egyptian and Comparative Law, Ain Shams Library, Cairo, 1974, Page 223.

orientations, and transparency may hinder administrative activity, leading to delays in procedures and creating a suitable climate for disputes"¹³⁰.

On the other hand, some aspects of jurisprudence argue that professional secrecy is an obstacle to the right to access information and that "restricting employees with professional secrecy in accordance with the provisions of Article 18 of the General Basic System of Public Service, which remains vague. It is noted that these provisions do not help to activate the duty to report corruption, which is stipulated in Article 42 of the Criminal Procedure Code. They may contradict the achievements of the law protecting witnesses and whistleblowers, especially in Article 82, which states that whistleblowers cannot be prosecuted, either disciplinarily or criminally, based on disclosing professional secrets if the crimes reported were discovered while they were performing their duties"¹³¹.

In Palestine, effective legislation has adopted professional secrecy and its disclosure as a broad and loosely defined crime punishable by law. Therefore, it poses a significant barrier to the right to access information. The criminal legislation states that "anyone who discloses a secret that he has learned by virtue of his profession or employment shall be punished with imprisonment for a term not exceeding three years."

1. Obtained official secrets by virtue of his official position or status and disclosed these secrets to those who are not authorized to access them or to those whose job nature does not require such access, in accordance with the public interest.

¹³⁰ Lina Mohammad Odeh Al-Agawat: Master's thesis entitled "The administration's right to possess administrative papers according to the guarantee law for the right to access information No. (47) of 2007", Mutah University - Jordan, 2018, Page 33.

¹³¹ Dunia Jamal Eddine: The reality of the right to access information in Morocco between the challenge of transparency and the question of good governance, Law and Business Magazine, Issue (53), 2020, Page 44.

2. Held in his possession classified documents, drawings, plans, models, or copies thereof without having the right to keep them or without the nature of his job requiring him to do so while performing an official or government service.

3. Had knowledge of a secret due to his profession and disclosed it without a justifiable reason"¹³².

The Yemeni Penal Code also recognizes this obstacle of professional secrecy, which states that:"

1. Whoever, by virtue of his profession, trade, or status, is entrusted with a secret and discloses it in circumstances other than those authorized by law, or uses it for his benefit or the benefit of another person without the consent of the owner of the secret to disclose or use it, shall be punished with imprisonment for a period not exceeding one year or a fine.

2. The punishment shall be imprisonment for a period not exceeding three years if the perpetrator is a public employee who was entrusted with the secret during, due to, or on the occasion of performing his duties"¹³³.

The Moroccan legislation has adopted this approach, and accordingly, it states that "regardless of the rules established in the criminal law regarding professional secrecy, every employee must keep confidential the professional secrets related to the work and news he knows during the performance of his duties or on the occasion of practicing them"¹³⁴.

¹³² Article (355) of the Jordanian Penal Code No. 16 of 1960.

¹³³ Article (258) of the Presidential Decree-Law No. 12 of 1994 on crimes and punishments

¹³⁴ Chapter (18) of Dahir of 24 February 1958.

In light of the existence of legal provisions in laws that enshrine the right to access information and allow for its publication, there is no need to criminally punish the disclosure of such secrets, especially if their publication is in itself permissible. The principle is that administrative bodies should voluntarily disclose the information they possess. Therefore, it is not useful and is an obstacle to discipline employees who disclose information, especially since they are more connected to that information, which the administration may seek to hide. It is also necessary to respect its international obligations under the international agreements it has joined.

Similarly, disciplining employees for taking a copy of the documents they possess and providing them to the public or disclosing them constitutes obstacles to accessing that right, as declaring such information encourages individuals to seek to obtain that information.

Regarding the practical reality in Morocco regarding the right to access information, it can be said that "despite a large number of financial documents and data that are made available to parliamentarians and citizens through the electronic portal of the Ministry of Finance, which is intended to promote government accountability and change its relationship with citizens, and enable them to monitor the budget and spending, there are many obstacles to achieving full financial transparency. These obstacles are mainly represented in the technical complexities of the documents and reports related to the Finance Law and the Liquidation Law, as well as the lack of sufficient details, as well as the difficulty of regulating financial analysis mechanisms by a large segment of representatives of the nation. Additionally, there are other obstacles that have led

Morocco to occupy unsatisfactory positions in the ranking of the International Budget Partnership organization"¹³⁵.

The technical complexities of financial documents and their non-publication simply and clearly are themselves obstacles to the right to access information. The principle is to publish the documents along with a brief summary that clarifies and summarizes the information contained therein so that the public can understand those documents and the information contained therein.

In terms of Moroccan criminal legislation, the direct disclosure of professional secrets is also criminalized, which contradicts the legislation regarding the right to access information. The law states that "doctors, surgeons, health inspectors, as well as pharmacists and generators, and anyone who is considered a custodian of secrets by his profession or permanent or temporary job, if he discloses a secret entrusted to him, except in cases permitted by law or in which he is required to report it, he shall be punished by imprisonment for a period of one to six months and a fine ranging from one thousand two hundred to twenty thousand dirhams"¹³⁶.

Although the article begins with doctors and pharmacists, which may lead some to believe that it refers to individual secrets, the addition of the phrase "and anyone who is considered a custodian of secrets" extends to all state employees. Therefore, they are prohibited from disclosing any information for fear of criminal and disciplinary accountability.

¹³⁵ Kabour Saadani: The right to access financial and tax information in Moroccan law, *Al-Manara Journal for Legal and Administrative Studies*, Special Issue, 2018, page 250.

¹³⁶ Article (446) of the Moroccan Penal Code.

As for Syrian legislation, it has followed the same approach and stated that "whoever, by his position, job, profession, or category, is aware of a secret and discloses it without a justifiable reason or uses it for his benefit or the benefit of others, shall be punished with a maximum of one-year imprisonment and a fine not exceeding two hundred Syrian pounds if the act is likely to cause harm, even if only moral harm"¹³⁷.

In this regard, the researcher believes that the criminal definition of secrecy has not been specifically addressed in a way that eliminates ambiguity. Rather, it has been made vaguer and more comprehensive, covering all justifications for work and everything related to the job, whether it has to do with the relationship between employees or their relationship with the public, or anything related to their work. It also conflicts with international agreements and standards regarding the right to access information, as we have previously explained the position of the International Covenant on Civil and Political Rights and the position of the UN Human Rights Committee in General Comment (34) and other international standards in this regard.

Here, a side of jurisprudence is seen as a way to overcome the obstacles and hindrances to the right to access information by defining confidentiality and governing it with "the new philosophy based on openness and cooperation with citizens and involving them in public affairs management. This will determine the position of the citizen in the disciplinary approach, and perhaps this determination is what makes some legislation seem strange in our current era, which is characterized by a shift towards a reality different

¹³⁷ Article (565) of the Syrian Penal Code.

from what was prevalent not long ago, either due to the influence of globalization of values or the emergence of a new policy based on participation and citizenship"¹³⁸.

Thus, the criminalization of professional secrecy constitutes an obstacle to the right to access information in light of the direction of Arab legislation to constitutionally establish this right. As a first step, it is necessary to address this contradiction and cancel the crime of disclosing secrets from criminal offenses, specifically those related to state secrets. As for private secrets, it is incumbent upon the state to criminalize their disclosure to ensure privacy among individuals and the sanctity of their private lives, but within clear and defined controls recognized in international human rights standards, especially the three-part test in this regard.

Regarding the crime of disclosing professional secrets, it should be noted that "the identity of the perpetrator is not determined at the time of disclosure but at the time of knowledge of the secret. The employee, after leaving his job, may disclose the secret he learned during his work, and thus, the perpetrator's identity is established. However, if he learned of the secret and disclosed it after leaving his job, this identity is considered unavailable, and therefore there is no crime of disclosing secrets. The essence of the crime is the violation of the ethical rules that arise from practicing the profession"¹³⁹.

One of the obstacles that hinders the right to access information is the ineffectiveness of the legislation related to this right, and the presence of many exceptions to the principle that have emptied the content of the text. For example, the law on

¹³⁸ Farid Bouhioufi: Master's thesis entitled "The right to information in Morocco", Abdelmalek Essaadi University - Faculty of Legal, Economic and Social Sciences - Tangier - Kingdom of Morocco, 2010-2011, Page 96.

¹³⁹ Sakina El Boutahri, Iman Iskass, Othmane Sfiani, and Aamir Al-Habib: The right to access information and professional secrecy, Faculty of Legal, Economic and Social Sciences - Mohammed V University in Rabat, 2017/2018, Page 27.

publications and publishing contains vague terms that violate international agreements and standards regarding the controls on this fundamental human right, which requires respect and does not allow the use of "vague terms" as controls on the right to access information.

Although the aforementioned law affirmed the right of journalists to access information, it contained legal provisions that could allow the administration to circumvent the right to access information and prosecute newspapers and journalists. For example, the law stipulated that "publications must refrain from publishing what conflicts with the principles of freedom, national responsibility, human rights, and respect for the truth..."¹⁴⁰

At first glance, the researcher may find that this article is intended to ensure that journalists perform their duties well. However, upon closer examination of the terminology used, such as national responsibility, does obtain information that has a high impact on public opinion and its dissemination, which may be considered by the executive authorities as going beyond national responsibility, from their point of view?

The terminology used in legal legislation is of great importance, especially when it comes to a law on publications and publishing. Therefore, the researcher believes that the term "national responsibility" has been included in the text for vague purposes that serve no purpose other than restricting rights, including the right to access information. It contradicts the obligations of the State of Palestine under international agreements and standards regarding access to information.

Moreover, the Law on Publications and Publishing, which is an old law that has not been amended to date, contradicts the obligations of the State of Palestine under international agreements that it has joined since early April 2014 and its commitments. Although it

¹⁴⁰ Article (7) of the Law No. 9 of 1995 on printing and publishing.

stipulates the right to access information, it did not specify the penalty by the administration in case the journalists' request for information is denied. It also did not impose sanctions on those responsible for not responding to journalists' requests, unlike the provisions of the law regarding journalists, which specify penalties for them and the role of publishing¹⁴¹. This requires legislative review in line with the provisions of the Palestinian Basic Law (Constitution) and the agreements that the State of Palestine has joined, especially the International Covenant on Civil and Political Rights, particularly Article 19 regarding the right to freedom of opinion and expression, which includes the right to access information and the necessary legislative amendments to comply with international standards.

In Egypt, the Press Law imposes many restrictions that hinder the right to access information. The law states that "no one is allowed to sell or distribute publications in public places or any other public location, even temporarily or occasionally, without obtaining a license from the Ministry of Interior"¹⁴². The same law also states that "the preservation of public order allows for the prohibition of foreign publications from entering and circulating in Egypt, and this prohibition is made by a decision of the Council of Ministers"¹⁴³.

This infringes on the right to access and circulate information, and assigning this task to the Council of Ministers is another violation of rights and freedoms. It would have been more appropriate for the Egyptian legislator, if necessary, to assign this authority to the competent judiciary rather than to the executive authority.

¹⁴¹ See Articles (44,45,46,47,48) of of the Law No. 9 of 1995 on printing and publishing.

¹⁴² Article (7) of the Egyptian Publications Law No. 20 of 1936.

¹⁴³ Article (9) of the Egyptian Publications Law No. 20 of 1936.

In this regard, some aspects of Egyptian jurisprudence suggest that "all restrictions on the circulation of publications under this law fall under the category of exceptions that the Egyptian legislator has not attempted to define accurately so far, such as (public order) ... all of these restrictions could be interpreted in a flexible manner, which hinders the flow of information contained in certain types of publications. Public order, from the perspective of the authority, has a concept that necessarily differs from the concept that citizens have of it, which necessarily hinders the freedom of the flow of information from its various sources"¹⁴⁴.

One of the obstacles to the right to access information is the Emergency Law¹⁴⁵, which includes restrictions that deprive individuals of their right to access information. The law states that "the President of the Republic, when a state of emergency is declared, may take appropriate measures to preserve security and public order, and he has, in particular, the right to:"

1. Imposing restrictions on the freedom of individuals to assemble, move, reside, and pass through certain places or times, arresting suspected or dangerous individuals who threaten security and public order, and allowing the inspection of individuals and places without adhering to the provisions of the Criminal Procedure Law.
2. Ordering the monitoring of all types of messages and the monitoring of newspapers, bulletins, publications, editorials, graphics, and all means of expression, propaganda, and advertising before their publication, and controlling, confiscating, and closing places

¹⁴⁴ Ahmed Ali Al-Laqani: *The Right to Access Information*, Dar Al-Nahda Al-Arabiya - Cairo, 2017, Page 223.

¹⁴⁵ In this regard, see: Decree-Law No. (7) of 2020 regarding the state of emergency in Palestine.

where they are printed, with the censorship on newspapers, publications, and media limited to matters related to public safety or national security purposes...

3. Prohibiting public gatherings, processions, demonstrations, celebrations, and other forms of gatherings, and restricting private meetings"¹⁴⁶.

One of the obstacles that hinder the right to access information is the declaration of a state of emergency, which most countries, including Arab countries, have witnessed. Under emergency legislation and defense orders, all legal deadlines, including those related to the right to access information, have been suspended.

It should be noted that a state of emergency should not affect the right to access information. "The restrictions imposed during a state of emergency should not affect the right to access information, as it is considered a constitutional right. Stopping the deadline for obtaining information would lead to holding the public facility or the entity holding the information responsible. There is no justification for stopping this deadline, especially as digitization allows for obtaining the required information without affecting social distancing measures that have been introduced to limit the effects of the pandemic. However, the final decision on the validity of our approach lies with the judiciary, which should base its decisions on the disputes presented to it"¹⁴⁷.

In Jordan, despite the law stipulating the right of journalists to access information and prohibiting the imposition of restrictions that hinder press freedom in ensuring the flow of information to citizens, there are no guarantees that ensure this right when it is violated¹⁴⁸.

¹⁴⁶ Article (3) of the Law of emergency (132),1958.

¹⁴⁷ Fatima Zahra Abatrap: The right to access information in the context of the health emergency, Law and Business Journal, Issue (63), 2020, Page 102.

¹⁴⁸ Article (3) of the Printing and Publication Law No. 8 of 1998.

Additionally, the Jordanian legislature has intentionally complicated the procedures for journalists and issuing licenses for publications, requiring them to register as a company, which hinders the right to access information by discouraging the establishment of such companies.

Therefore, the Jordanian legislation states that, "

"A prerequisite for granting a license to issue newspapers or specialized publications is that they are registered as a company in accordance with the provisions of the effective Companies Law. The registered company, according to the provisions of this paragraph (A) of this article, must provide its budget to the Companies Registrar"¹⁴⁹.

In Jordan, it has become clear that "journalists, who are the most involved in dealing with information, have been reluctant to comply with the law since its enactment. A study conducted by the New Jordan Center for Studies showed that about 42% of journalists do not know what the Right to Access Information Law is, and half of the ministries are not aware of the existence of this law"¹⁵⁰. This highlights the importance of training and awareness-raising focused on the provisions of the Right to Access Information Law.

In addition to the obstacles to obtaining information in the law regulating the press and publications, the legal situation in Jordan faces this right with the Protection of State Secrets and Documents Law No. 50 of 1971.

In this regard, the Al-Rai study in 2010 indicates that the right to access information faces legal obstacles, most notably the Protection of State Secrets and Documents Law No. 50

¹⁴⁹ Article (13) of the Printing and Publication Law No. 8 of 1998

¹⁵⁰ Yahya Shuqair: The compatibility of the Jordanian Law on Guaranteeing the Right to Access Information with international standards, Dar Al-Monzuma, 2012, Page 52.

of 1971, a temporary law for the past 73 years, which hinders the provisions of the Right to Access Information Law No. 47 of 2007¹⁵¹.

Some legal scholars argue "that although Jordan was the first Arab country to enact a law on access to information, it did not provide the expected leap in facilitating the flow of information and making it easily accessible to seekers. The law prioritized the implementation of existing legislation, rather than guaranteeing the right to access information, whether these laws were enacted before or after the Right to Access Information Law. This is considered one of the obstacles that hinder access to information, especially in the presence of other laws that require information confidentiality, such as the still-effective Protection of State Secrets and Documents Law"¹⁵².

The aforementioned legislation defines documents as "rewritable or recording tapes, photographs, and films, plans, drawings, maps, or the like, classified according to the provisions of this law." Secrets are defined as "any oral or written, printed or abbreviated, or printed on waxed paper information"¹⁵³.

Among the documents considered extremely confidential according to Jordanian legislation are "highly important political documents and those related to international relations, agreements or treaties, and all related negotiations and studies"¹⁵⁴.

¹⁵¹ Lana Khaled Salama Al-Qutaifan: The role of the guarantee law for the right to access information in media coverage in Jordan: from the perspective of journalists, Dar Al-Manthouma, 2013, Page 76.

¹⁵² Hamza Othman Abd Rabbo Basbous: The extent of implementation of Jordanian ministries and public institutions of the law guaranteeing the right to access information, Journal of Research and Development of Human Resources - Ramah, Volume 3, Issue 1, 2020, Page 23.

¹⁵³ Article (2) of the Law No. 50 of 1971 on the protection of state secrets and documents, published on page 1164 of Official Gazette No. 2315 of 1/8/1971.

¹⁵⁴ Article (3) of the Law No. 50 of 1971 on the protection of state secrets and documents, published on page 1164 of Official Gazette No. 2315 of 1/8/1971.

This text circumvents the right to access information, as information related to treaties to which the state will accede is among the documents and information that concern citizens and that should be announced by states to their peoples before ratifying them.

International agreements gain validity and force upon signature, and it is not the concern of the other contracting party or parties whether the people of that country agree to that agreement or not. International agreements remain in force with their obligations, even if the governing systems change.

In light of the adoption by countries of the right to access information and Jordan's issuance of this law and its regulation, it is regrettable to continue to have the existence and enforcement of the Protection of State Secrets and Documents Law, especially since it contains provisions that undermine the right to access information and constitute an obstacle to accessing that right.

It is also worth noting that the Right to Access Information Law did not impose "any legal, administrative, or disciplinary sanctions on individuals who provide information about their mismanagement," while the Protection of State Secrets and Documents Law No. 50 of 1971 imposes severe penalties in the event of a violation"¹⁵⁵.

According to the Protection of State Secrets and Documents Law, "Anyone who enters or attempts to enter a restricted area with the intention of obtaining protected secrets, objects, documents, or information that must remain confidential for the security of the state shall be punished with temporary hard labor. If this attempt is made for the benefit

¹⁵⁵ Moaz Walid Mustafa Abu Dalu: The citizen's right to access information from the public administration in Jordan in comparison to Yemeni law, Dar Al-Monzuma, 2018, Page 56.

of a foreign state, the punishment shall be permanent hard labor. If the foreign state is an enemy, the punishment shall be death"¹⁵⁶.

This illustrates "the shortcomings of the Jordanian legislator in ensuring the implementation of the right to access information by ignoring the punitive and criminal aspects that are imposed on all violators to achieve this right, despite the importance of this aspect in consolidating the principle of the right by imposing deterrent penalties on anyone who violates the provisions of this law. This poses a danger to its existence and adds to its provisions a contradictory vagueness to the principles of transparency and democracy built on this right"¹⁵⁷.

In Egypt, Law No. 121 of 1975 on the Protection of State Secrets and the Regulation of their Disclosure has created an obstacle to accessing information, as it criminalizes the publication of such information. The law states that "anyone who, by virtue of their work or responsibility, has access to unpublished documents or records referred to in Article 1, or their images, shall not publish them, or any part of their content, except by a special permit issued by a decision of the Council of Ministers based on the recommendation of the competent minister"¹⁵⁸.

The same legislation also states that "anyone who, by virtue of their work or responsibility, has access to confidential information related to the high policies of the state or national security shall not publish or broadcast it if it would harm the security, military, political, diplomatic, or economic interests of the country, whether the

¹⁵⁶ Article (14) of the Law No. 50 of 1971 on the protection of state secrets and documents.

¹⁵⁷ Abdu Mohammed Othman Al-Mukhlafi: The right to access information in Yemeni law: a comparative analytical study, *Journal of Libraries and Information*, Issue (16), 2016, Page 108.

¹⁵⁸ Article (2) of the Law No. 121 of 1975 on the preservation of official state documents and the regulation of their publication.

information concerns events that they or others who have held public or general proxy positions have initiated or became aware of by virtue of their work unless twenty years have elapsed since it was published or broadcast or a special permit is issued by the Council of Ministers based on the recommendation of the competent minister"¹⁵⁹.

The penalties imposed by the Egyptian legislation were less severe than those imposed by the Jordanian legislator; Accordingly, it was stated that: "

1- Without prejudice to any harsher punishment provided for in any other law, anyone who violates the provisions of Article 2 shall be punished with imprisonment and a fine not exceeding one thousand pounds, or with one of these two penalties.

2- If the perpetrator derives any benefit or profit from the crime, he shall be sentenced to an additional fine equal to the value of the benefit or profit obtained.

3- In all cases, the confiscation of the materials involved in the crime shall be ordered"¹⁶⁰.

Therefore, we find that the general legislation concerning journalists, press freedom, and access to information is hindered by the barrier of information confidentiality, and thus the administration's refusal to disclose such information is due to "the absence of any law guaranteeing the classification of information at least as confidential. Therefore, all state information is considered confidential unless the responsible minister for the relevant administration decides to lift the ban on disclosing the information held by the administration"¹⁶¹.

¹⁵⁹ Ibid

¹⁶⁰ Article (3) of the Law No. 121 of 1975 on the preservation of official state documents and the regulation of their publication.

¹⁶¹ Farid Bouhioufi: Master's thesis entitled "The right to information in Morocco", Abdelmalek Essaadi University - Faculty of Legal, Economic and Social Sciences - Tangier - Kingdom of Morocco, 2010-2011, Page 96.

In this regard, a part of jurisprudence sees¹⁶² that the legislator did not specify the competent authority for classifying confidentiality, "who has the right to challenge the classification of information, to what extent it is classified, and thus it is considered confidential in terms of origin, disclosure, and exception. The law leaves the matter of information classification and its degree of importance either to the legislation, where the law itself sets the classifications or to the entity that possesses the information, without there being a means of appeal or challenge to these classifications or the method of classifying them, allowing for information to be classified as protected information that officials can refuse to disclose" to its requester under the guise of confidentiality and in light of adopting a policy of non-disclosure of information.

Similarly, the low level of awareness among the general population poses an obstacle to accessing information, as the vast majority of Arab people do not care about government information under the prevailing culture that Arab governments are corrupt. At the same time, there is a lack of will among the people to hold their governments accountable, and they suffice with blaming these corrupt governments without any hope of reform in the near future.

Perhaps the Arab Spring was in itself a qualitative leap for some people in changing their regimes, which enhances the scope for enacting legislation that guarantees the right to access information. However, that spring was soon followed by autumn in the same countries that witnessed it, as demonstrated by the Arab Republic of Egypt, where the military quickly returned to rule it again. The feeling among Egyptians is growing that

¹⁶² Yahya Shuqair: The compatibility of the Jordanian Law on Guaranteeing the Right to Access Information with international standards, Dar Al-Monzuma, 2012, Page 65.

their fate and destiny are always to be ruled by the military, and that there is no place for civilian rule in the state's governance.

One of the obstacles that hinder the right to access information is bureaucratic inflation, which results from the proliferation of administrative positions, departments, and divisions within an administration, which makes it difficult to coordinate between them and for citizens to communicate with them.

Moreover, "the multiplicity of levels within the administrative apparatus prevents upward communication, especially with the public, by depriving lower-level employees of access to the content of administrative decisions that affect their daily and professional lives. This has led some to emphasize that the relationship between the president and the subordinate remains a coercive relationship rather than a consultative one that informs citizens"¹⁶³.

Another obstacle to the right to access information is the absence of legal texts that provide for the punishment of an employee who neglects his duties or provides false information with malice. The Palestinian Access to Information Bill and the Jordanian legislation regulating the right to access information "came without any provision that imposes any penalty on any employee who violates any of its provisions. The legislator did not ensure any deterrent penalties against anyone who abuses the authority of classification or does not abide by the specified period for indexing and organizing information or deliberately destroys or hides documents intending to harm the applicant's interest"¹⁶⁴.

¹⁶³ Aziz Idriss: The problem of transparency within the Moroccan public administration, a thesis for obtaining a Master's degree in Public Law, Faculty of Law Aqdaal - Rabat, 1996-1997, Page 242.

¹⁶⁴ Alaa Abdullah Hussein Nasirat: Ensuring the Right to Access Information in Jordan - A Comparative Study with International Human Rights Law, Dar Al-Munathama, 2016, Page 61.

Formality poses an obstacle to the right to access information, as citizens requesting information must submit their requests and information to the relevant employee for processing. Despite this, some schools of thought argue otherwise and justify that "not requiring information seekers to provide their personal information may have serious consequences, especially in cases where an alias is used or when information is destroyed and no punishment can be issued, particularly as stipulated in Tunisian legislation. In our opinion, to ensure the safety and accuracy of the information, mechanisms must be put in place, such as including an ID number in the request, which is a fundamental guarantee for protecting information from distortion or unauthorized use and can also lead to punishment for the aforementioned crime"¹⁶⁵.

The researcher believes that the reasons put forward by this school of legal thought do not justify the complexity of legal procedures for accessing information and that the fear of information being used after being distorted is a useless argument. In the event that this occurs, it is the responsibility of the administration to produce the original document and thereby refute any claims made by others.

One of the obstacles that hinder the right to access information is the perpetuation of secrecy for some of these restrictions and the lack of a link between the state of secrecy and the cessation of reasons or the passage of a certain period. In this regard, some legislations have taken a different approach, as the Mexican Constitution repeats the idea that exceptions to the freedom of information should be temporary, and once the release of information is no longer harmful to the protected interest, it should be disclosed. In many countries, this principle is reflected in the law by imposing total time limits on the

¹⁶⁵ Khadija Khali and Mahdaoui Abdelkader: Procedural guarantees for exercising the right to access information in Maghreb legislation, *Law and Society Journal*, Volume (7), Issue (2), 2019, Page 174.

confidentiality of information, for example, 20 or 30 years, which can only be extended in some special cases.¹⁶⁶

Regarding the perpetuation of exceptions and restrictions, in the Palestinian context, there was an initial attempt not to restrict them, but then the same legal provision chose to join the ranks of regressive countries and granted the General Commissioner the authority to keep the information confidential for periods exceeding twenty years and made his authority absolute in this matter.

Accordingly, it was stated that "the competent employee may not refuse to disclose information in the cases mentioned in Articles (19 and 20) of this law if this information is still in the possession of the institution and dates back to more than twenty years, except in cases in which the authorized person (commissioner) is convinced of the need to keep this information confidential for another period of time, subject to renewal"¹⁶⁷.

Therefore, it was stated that "refusing to activate the right to access information in the Palestinian public sector leads to a significant weakening of accountability in this sector. Therefore, accepting the assumption that leads to not activating the right to access information in the Palestinian public sector leads to a significant weakening of accountability in this sector"¹⁶⁸.

One of the obstacles that hinder the right to access information in Palestine is the violations committed by the executive authority against journalists and the press, as they are the most concerned parties to access information. "Human rights organizations in the

¹⁶⁶ Michael Carr and Toby Mendel: Establishing freedom of information: An analysis of constitutional protection of freedom of information, March 2012, Page 13.

¹⁶⁷ Article (21) of the draft law on the right to access information.

¹⁶⁸ Freedom of Information and Access: The Basis for Transparency and Accountability, Publications of the Coalition for Integrity and Accountability - , First Edition, February 2006, Page 16.

Palestinian territories have documented a series of violations committed by the executive authorities, particularly the security agencies, against the media and journalists. These violations include the detention, interrogation, and arrest of journalists, the closure of media outlets, especially local radio and television stations and newspapers, for varying periods, revocation of licenses, confiscation of publications, physical assault on journalists, harassment and preventing them from covering certain events"¹⁶⁹.

One of the obstacles that hinder the right to access information is the lack of necessary systems to implement the legislation related to the right to access information. The competent authorities are responsible for managing public records in ministries and public institutions do not have specific systems to determine what is available for access or what is exempted from disclosure due to confidentiality. The decisions to allow access are entirely up to the ministry or the public institution itself, based on the type of records requested or the provisions of some laws related to the work of those ministries and public institutions.¹⁷⁰

One of the legal barriers to the right to access information is the confidentiality of meetings, including government meetings and legislative council committees. While legislative council meetings are public and broadcast on television, the legislator made committee meetings confidential. Therefore, it was stated that:"

1- Committee sessions are confidential, and their convening is not valid except in the presence of a majority of their members. Decisions are issued by a relative majority, and in case of a tie, the side that the president voted for prevails.

¹⁶⁹ Ahmad Abu Dayya: Freedom of Access to Information in Palestine, Publications of the Coalition for Integrity and Accountability, 1st edition, 2005, Page 39.

¹⁷⁰ Public Records Management and the Public's Right to Access, Publications of the Coalition for Integrity and Accountability - AMAN, Report Series (74), December 2013, Page 14.

2- Committees are permitted to hold public sessions."¹⁷¹

It appears that the principle has been reversed to become an exception, and the exception has become the norm. It is not sufficient to argue that the work of committees is preparatory and not final and that the personal views of committee members may not satisfy some of the public who elected that deputy¹⁷². These arguments are weak and do not serve the desired goal of ensuring the guarantees that guarantee the right to access information.

Administrative corruption in the Palestinian state is also considered an obstacle to the right to access information. In this regard, Transparency International believes that the effective implementation of the right-to-access information law is a necessity to combat corruption. Information is necessary for making informed decisions, and information is also power. When information is not freely available, corruption can flourish, and basic rights may not be available, and corruption can hide behind the veil of secrecy.¹⁷³

In this context, it should be noted that the right to access information contributes to strengthening efforts aimed at exposing public corruption, as the latter thrives in darkness and secrecy. Fighting corruption requires opening the corridors of administration and public access so that citizens can know what their governments are doing and what decisions they are making, and thus have the possibility of holding them accountable for those actions and decisions.¹⁷⁴

¹⁷¹ Article (54) of Bylaws of the Legislative Council.

¹⁷² Report Series on the Right to Access Public Information, Publications of the Coalition for Integrity and Accountability - AMAN, Report Series, September 2006, Page 6.

¹⁷³ Information Ownership: Accessing Information in Palestine, 2013 Publications of the Coalition for Integrity and Accountability – AMAN, Page 8.

¹⁷⁴ Abdelaziz Dahmani: The right to access information and civil society: what is the relationship, Al-Manara Journal of Legal and Administrative Studies, Issue (13), 2016, Page 149.

One of the obstacles to the right to access information is the absence of awareness campaigns and education about the existence of legislation regulating the right to access information. Most ministries and departments covered by the provisions of the law did not commit to training their employees responsible for implementing the law on how to apply it. Sufficient resources were not allocated to train the most frequently used groups of people on how to use the law.¹⁷⁵

Therefore, the principle of the right to access information goes beyond the legal, institutional, or practical framework. Campaigns supported by the state to educate citizens about accessing information are of great importance as a complement to the law. Unless citizens understand the importance of this right, their exercise of it will remain incomplete and will not achieve the ultimate goal of this right. This awareness of the principles of the right to access information by citizens cannot be achieved without the intervention of all civil society actors, including political parties, unions, and associations, in addition to public institutions.¹⁷⁶

One of the obstacles to the right to access information is the absence of systems that specifically determine fees for accessing information from entities that provide information, such as the Palestinian Central Bureau of Statistics. "There is no written system that specifies the cost of extracting data that requires cost, but most of the center's publications are sold at either low prices or for free." This deficiency may hinder access

¹⁷⁵ Lina Nazmi Al-Khashani: The right to access information law and its opposition to international standards, *Al-Turath Journal*, Issue (23), 2016, Page 203.

¹⁷⁶ Mohammed El Zahi: The citizen's right to access information and constitutional entrenchment, *Moroccan Journal of Legal and Political Systems*, Issue (10), 2016, Page 82.

to information if high amounts are demanded, especially in the absence of a written legislative policy represented by systems.¹⁷⁷

The exceptions and restrictions on the right to access information are also controversial issues that open the door for countries to interpret and apply them in a way that serves their prevailing system, given their generality and broad language, as stated in the International Covenant on Civil and Political Rights. This requires serious consideration of establishing a special international convention for this right that clarifies its contents and the obligations of states to activate it and specifies the restriction of the right in a more clear and precise manner.¹⁷⁸

State institutions are keen to expand the scope of exceptions to the public's right to access information, under various pretexts, including national security, foreign and economic interests, and other justifications that these entities have explicitly or implicitly raised to stop the public from enjoying the rights granted by the law within certain limits.¹⁷⁹

Some of these exceptions are unjustifiable, such as exempting private bodies¹⁸⁰ "from the obligation to disclose necessary information to protect or exercise any right... which is

¹⁷⁷ Jabril Mohammed and Nada Haniti: *The Citizen's Right to Access Public Information*, Report Series 7, Publications of the Coalition for Integrity and Accountability, 2007, Page 19.

¹⁷⁸ Nahla Abdulqader Al-Moumani: *The right to access information in the Jordanian legal system and regional and international human rights standards*, Dar Al-Monzuma, 2015, Page 124.

¹⁷⁹ Marwa Mohamed Shaker Zaki: *Freedom of information exchange in government information centers: a field study*, Arab Portal for Libraries and Information, Issue (58), 2020, Page 9.

¹⁸⁰ A more advanced trend has emerged that grants individuals the right to obtain information held by private bodies that do not perform public benefits. Article 32 of the South African Constitution of 1996 provides for the right of individuals to obtain information held by private bodies if that information is necessary for the exercise or protection of any right, and this provision has been emphasized in the Promotion of Access to Information Act of 2000, where the first paragraph of Article 50 of it stipulates the right of individuals and government agencies to obtain information held by private bodies whenever it is necessary to exercise or guarantee individual rights, This is in line with the organization's Chapter

owned by private bodies and is necessary to exercise and protect any right, given that many private bodies also possess information that, if concealed, would infringe on individuals' rights to receive information and news"¹⁸¹.

In this regard, it is necessary not to expand the exceptions to the right to access information, as expanding the exceptions, especially their interpretation, can empty the right to access information of its content. Therefore, a balance must be struck that protects the public interest without harming legitimate private interests.¹⁸²

One of the obstacles to the right to access information is restricting that right based on citizenship. Some legal systems, such as the Moroccan legislator, "narrowed the circle of individuals who have the right to request information when it was limited to citizens, excluding resident foreigners..."¹⁸³

In this field, such a provision will have a negative impact on foreign investments, whether directly or indirectly. Therefore, some aspects of jurisprudence argue that "depriving foreigners of access to information is not consistent with the role of this right in achieving economic development, given that information is one of the essential elements in attracting foreign investments. Therefore, creating a suitable climate for attracting foreign

19, which extends the right of access to information to those educational institutions, within the framework of limited exceptions.

Kabour Saadani: The right to access financial and tax information in Moroccan law, *Al-Manara Journal for Legal and Administrative Studies*, Special Issue, 2018, Pages (145,151).

¹⁸¹ Akou Ali: The Right to Access Information: A Study in Light of Law 31.13, *Business Disputes Magazine*, Issue (53), 2020, Page 201.

¹⁸² Ahmed Mafid: The Right to Access Information and Participation in Public Life, *Moroccan Journal of Local Administration and Development*, Issue (114), 2014, Page 22.

¹⁸³ Hassan Taki: The Right to Access Information between the Constitution and Parliamentary Proposals, *Publications of the Moroccan Journal of Public Policies - Human Rights Notebooks Series*, Issue (1), 2012, Page 93.

investments will remain limited in achieving its objectives unless it is consistent with a basic condition that supports it, which is guaranteeing the right to access information for foreign investors (individuals and companies). These investors cannot put their investments without legal provisions that guarantee their right to access information about the legislative framework for their investments, in terms of the level of freedom of expression in the state, government oversight, the level of financial and administrative corruption, and facilitating the establishment of investment projects"¹⁸⁴.

One of the obstacles that hinder the right to access information is duplication in publishing data by the competent authorities, leading to severe repetition and duplication without clear controls or references. Some aspects of jurisprudence suggest that "duplication in publishing statistics and information... is such that all ministries and government agencies issue and publish statistics and information in a way that involves severe repetition and duplication without clear controls or references. This is due to the absence of a national coordination mechanism and the multiple sources of producing the same statement, and the absence of a national reference for approving statistical and informational publications"¹⁸⁵.

Another obstacle that hinders the right to access information is the absence of serious responsibility built on and related to the information. The absence of responsibility is related to both the presence and absence of access to information and the absence of responsibility leads to the disappearance of information.

¹⁸⁴ Kabour Saadani: The right to access information in light of the draft law 31.13, Al-Manar Journal for Legal and Administrative Studies, Issue 19, 2017, Page 145.

¹⁸⁵ Marwa Mohamed Shaker Zaki: Freedom of information exchange in government information centers: a field study, Arab Portal for Libraries and Information, Issue (58), 2020, Page 8.

In this regard, some aspects of jurisprudence suggest¹⁸⁶ that "serious accountability can only be achieved by providing accurate information by decision-makers about the public management process, as well as expanding the scope and areas of the flow and provision of correct information, even if the provision of information is not linked to a request or a specific procedural behavior, or limited to a specific period. A transparent system ensures the free and comprehensive flow of information so that it becomes available and circulated among all concerned parties. Ultimately, transparency is not an end in itself, but a means of proving the integrity of the public management process, and also a means of openness to citizens within the framework of participatory democracy."

One of the obstacles that hinder the right to access information is the requirement of legal standing in the request for information. The principle of fairness dictates that "the administration is not allowed to inquire about the purpose behind the applicant's desire to obtain the documents or the citizen's intended use of them... It is undoubtedly true that the legislator's requirement for the existence of an interest in the applicant would grant the administration an unlimited discretionary authority that it may exploit to limit the extent of individuals' enjoyment of the right to access information, and thus deviate from the goals that the law usually aims to achieve"¹⁸⁷.

Regarding the obstacles related to the right to access information, some aspects of jurisprudence suggest that "no matter how good the legal text regulating the right to access

¹⁸⁶ Maria Boujdain: The right to access information between the boldness of administrative reform and guarantees of implementation, *Journal of Legal Research and Studies*, Issue (17), 2020, Page 18.

¹⁸⁷ Kabour Saadani: The right to access information in light of the draft law 31.13, *Al-Manar Journal for Legal and Administrative Studies*, Issue 19, 2017, Page 148.

information is, the challenge of implementing it, in reality, remains the biggest challenge facing all the interrelated parties in this context"¹⁸⁸.

Therefore, the constitutional recognition of the right and the enactment of a law that specifies the conditions for its exercise does not mean that it has put an end to the era of secrecy that has lasted for a long time in practice, or that it has opened the door to the closed administration and made it subject to accountability and scrutiny. No matter how perfect the legal text may be, it needs to be implemented in reality, otherwise, it remains ink on paper. Therefore, it is necessary to reconsider the legal texts that conflict with the right to access information and the need for the administration to be open to its citizens, as well as build awareness among citizens of the importance of the right to access information.¹⁸⁹

After discussing the legal obstacles that impede the right to access information, including the policy of criminalizing those who seek information and the absence of legislative guarantees to protect it, as well as the lack of conformity with relevant international agreements and standards on the right to access information, we move on to the second section where we will explain the procedures and restrictions imposed on the right to access information.

¹⁸⁸ Mohammed El Raji: The constitutional and legislative framework for the right to access information in Morocco, *Law and Business Journal*, Issue (53), 2020, Page 28.

¹⁸⁹ Dunia Jamal Eddine: The reality of the right to access information in Morocco between the challenge of transparency and the question of good governance, *Law and Business Magazine*, Issue (53), 2020, Page 41.

Chapter Two

Procedures and Restrictions on the Right to Access Information

Legislation governing the right to access information outlines the legal procedures for obtaining information, whether those related to requests from citizens or those initiated by the state proactively to disclose information.

At the same time, all legislation governing the right to access information has sought to restrict that right by specifying limited exceptions to it. These restrictions can be absolute or qualified, whether related to the public interests of the state or the personal interests of individuals.

To understand the objectives of this Chapter, we will divide it into three sections. In the first section, we will discuss the means of accessing information, while in the second section, we will address the exceptions to the right to access information. The third and final section of the study will be dedicated to highlighting the utmost importance of the right to access information in the Palestinian context specifically.

Section One: Means of Accessing Information.

The means of obtaining information can be categorized by their source into two types, with no third type in between. The first type involves an individual submitting a formal request to obtain information, following the formal procedures outlined in the applicable legislation. The second source of obtaining information is through proactive disclosure, which states seek to adopt through legislation that mandates the proactive electronic publication of information.

To understand the objectives of this section, we will divide it into two subsections. In the first subsection, we will discuss the process of requesting

information, while in the second subsection, we will address the proactive disclosure of information.

Subsection One: Requesting to Access Information

It should be noted that the request for information is a "right that allows citizens to submit a request for information according to the approved form for this purpose in ministries, institutions, and government departments from which information is sought"¹⁹⁰. The request for information is submitted to the designated official responsible for receiving such requests. The Palestinian Access to Information draft law stipulates that "public institutions¹⁹¹ must appoint a specialized employee to consider requests for access to information, granting him/her the necessary powers to search for and access the requested information"¹⁹².

In Jordan, it is stated that "the official is required to facilitate access to information and ensure its disclosure without delay and in the manner stipulated in this law"¹⁹³. According to the same legislation, the term "official" refers to the Prime Minister, Minister, President, or Director-General of the Department¹⁹⁴.

¹⁹⁰ Request for information - Civil Service Bureau, published on the electronic link:

<http://www.csb.gov.jo>

¹⁹¹ A public institution is defined, according to the draft law on access to information, as "all ministries, departments, agencies, legislative and judicial institutions, and local bodies that manage a public utility, perform public works, or possess information affecting the environment, public health and safety, or any institution that the Commissioner-General considers a public institution for the purposes of implementing this law.

Article (1) of the Palestinian draft law on access to information.

¹⁹² Article (4) of the Palestinian draft law on the right to access information.

¹⁹³ Article (8) of the Law No. 47 of 2007 ensuring the right to access information.

¹⁹⁴ Article (2) of the Law No. 47 of 2007 ensuring the right to access information.

In this regard, it can be noted that the Palestinian draft law was more successful than the Jordanian legislation, as assigning the task of receiving and responding to requests for information to a specific employee is better than assigning this task to the Prime Minister, Minister, or Director-General, given the large responsibilities already placed on them.

In Morocco, the task of receiving requests for information has been entrusted to designated individuals appointed by public institutions. The legislation states that "each concerned institution or body must appoint a person or persons tasked with receiving requests for information, studying them, providing the requested information, and providing necessary assistance to the requester in preparing their request"¹⁹⁵.

What sets the Moroccan legislation apart is that, in addition to appointing a specialized employee to receive requests for information from citizens, the same employee is also tasked with assisting the information seeker in preparing their request for information.

In Yemen, the legislation stipulates the appointment of a specialized employee to receive requests for information from individuals. The legislation states that "each entity must appoint an information specialist at the head of an information unit as part of the national information system, which is administratively and functionally linked to the appointing entity"¹⁹⁶.

The same legislation defines the specialized employee as "the employee appointed by the entity to consider requests for access to information..."¹⁹⁷ The article also defines the concerned entity as "legislative, executive, and judicial authorities, ministries, agencies,

¹⁹⁵ Article (12) of Dahir No. 15-18-1 issued on 22/2/2018 implementing Law No. 13-31 on the right to access information.

¹⁹⁶ Article (8) of the Law No. 13 of 2012 on the right to access information.

¹⁹⁷ Article (2) of the Law No. 13 of 2012 on the right to access information.

central and local institutions, public sector units, and any entity partially or wholly funded by the general state budget."

It can be observed that according to the current Yemeni legislation regarding access to information, all three branches of the state (legislative, executive, and judicial) in addition to public and local entities and all entities funded by the state are required to appoint a specialized employee tasked with receiving requests for information from citizens.

The appointment of a specialized employee to receive requests for information is considered one of the most important measures in providing information. Determining the responsible entity for providing information to the requester is one of the essential factors necessary to exercise the right to access information.¹⁹⁸

The Tunisian legislation provides that "every structure subject to the provisions of this law must appoint a person responsible for access to information and a deputy, by means of a decision issued for this purpose, which includes their essential information, position, and job description"¹⁹⁹.

The appointed person is entrusted with several tasks, including receiving requests for information. The legislation further states that "the person responsible for access to information shall be responsible for the following in particular:

1. Receiving requests for information, processing them, and responding to them.
2. Establishing a link between the relevant structure to which they belong and the access to the information body referred to in Article 37 of this law.

¹⁹⁸ Mounira Ejal: Master's thesis entitled "The right to access information in Algerian law", African University - Faculty of Arts and Humanities - Department of Legal and Administrative Sciences, 2010-2011, Page 14.

¹⁹⁹ Chapter (32) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

3. Develop an action plan to promote the right of access to information in coordination with senior officials in the relevant structure. The plan includes clear objectives and a schedule that specifies the stages, deadlines, and roles of all stakeholders, under the supervision of the head of the relevant structure"²⁰⁰.

It is worth noting that the Tunisian legislator required the appointment of a person responsible for the information and the provision of information to the requester, as well as the appointment of a deputy for them. This is in contrast to comparative legislation, and it can be argued that the Tunisian law went beyond the role of law and entered the realm of regulations concerning this aspect, as laws generally address general issues without delving into details such as the appointment of a deputy for the responsible person.

Regarding the formalities of requesting access to information, the Palestinian legislation required that requests for information be made in writing. The legislation states that "a request for information must be submitted in writing to the institution that holds the information. This request must include sufficient details to enable the specialized employee to extract the information with minimal effort"²⁰¹.

The Palestinian legislation did not specify the details that must be included in a written request for information but rather emphasized the need for the request to include sufficient details to enable the specialized employee to extract the information with minimal effort. This is a good approach, as the details provided in the request form a record that binds the specialized employee. The specialized employee is obliged to ensure that the requester is notified within the necessary period for responding to the request.

²⁰⁰ Chapter (34) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

²⁰¹ Article (11) of the Palestinian draft law on access to information.

Regarding the formalities of requesting access to information in Yemen, the legislation stipulates that "a request for information must be submitted in writing using a form prepared for this purpose to the entity believed to possess the information, including the name, residence address, and workplace location of the requester. The request must contain sufficient details to enable the specialized employee to extract the information. Requests for information can be submitted via email, postal mail, or by appearing in person at the source of information or the National Center for Information. In all cases, the request must be made using the designated form"²⁰².

The researcher notes that the Yemeni legislator was more successful than the Palestinian Access to Information draft law in allowing requests for information to be submitted electronically or by mail, keeping up with the developments that individuals experience in this era. Once a request for information is submitted, the specialized employee is obliged to provide the requester with a notice confirming receipt of the request. The Palestinian draft law states that "upon receipt of the request, the specialized employee must immediately provide a notice to the requester indicating the date of submission, the type of information requested, and the necessary period for responding to the request"²⁰³.

It is stated in the Moroccan context that "information is obtained upon request submitted by the interested party, according to a model prepared by the committee referred to in Article 22 below, which includes the first and last name of the requester, their personal address, their national identity card number, or for foreigners, the document number proving their legal residence on the national territory in accordance with the current legislation, and if necessary, their email address, and the information they wish to

²⁰² Article (15) of the Law No. 13 of 2012 on the right to access information.

²⁰³ Article (12) of the Palestinian draft law on access to information.

obtain. The request is directed to the head of the relevant institution or body by direct deposit against a receipt or by regular or electronic mail with a notice of receipt"²⁰⁴.

Regarding the Jordanian legislator, it states that "the responsible party must facilitate access to information and ensure its disclosure without delay and in the manner prescribed by this law"²⁰⁵. Regarding the formalities for requesting information, it states that "the request for information must be submitted using the approved form, including the name, residence, and place of work of the applicant, as well as any other information determined by the council. The applicant must specify the information they wish to obtain with accuracy and clarity"²⁰⁶.

As for the Tunisian legislator, it states regarding formalities that "the request for access to information must include the name, surname, and address of the natural person, and the social name and headquarters for the legal person, in addition to the necessary clarifications regarding the requested information and the relevant structure"²⁰⁷.

Upon receiving a request for information, the relevant official is obligated to respond to the requester within a specified timeframe. The Palestinian draft law on access to information states that "the responsible official must respond to the request within fifteen days from the date of submission. The official may extend this period once for no more than fifteen days if the request includes a large number of information or if access to the information requires consultation with a third party or another public institution. Failure to respond during this period is considered a rejection of the request"²⁰⁸.

²⁰⁴ Article (15) of Dahir No. 15-18-1 issued on 22/2/2018 implementing Law No. 13-31 on the right to access information.

²⁰⁵ Article (8) of the Law No. 47 of 2007 ensuring the right to access information.

²⁰⁶ Article (9) of the Law No. 47 of 2007 ensuring the right to access information.

²⁰⁷ Chapter (10) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

²⁰⁸ Article (13) of the Palestinian draft law on access to information.

The researcher believes that the Palestinian draft law has several shortcomings in this area. Firstly, the law does not address cases where there is an urgent need to obtain information, and this is an issue that needs to be rectified. The Palestinian legislator has granted legal deadlines of up to thirty days, which is a relatively long period, especially if the request concerns urgent information.

Secondly, the Palestinian draft law allows the official to extend the period for providing the requester with information for several reasons, including if the request includes a large number of information or if access to the information requires consultation with a third party or another public institution. If the first reason can be overlooked, it is essential for the researcher not to overlook the latter reason and the need to comment on that part of the article.

Finally, if the draft law on access to information has defined exceptions that limit the right to access information, and made information disclosure the default²⁰⁹, then what is the purpose of consulting a third party or another public institution?

The same draft law also stipulates that the refusal to provide information cannot be based on any reason other than two: firstly, that the information is not in the possession of the institution, and secondly, that the requested information falls under the exceptions specified in the same draft law.

Therefore, it is stated that "if the request is rejected, the responsible official must provide a written response to the requester explaining the reason for the refusal, and the reason should not go beyond the exceptions specified in the law:

1. The information is not in the possession of the institution.

²⁰⁹ Article (3) of the Palestinian draft law on access to information.

2. The requested information falls under the exceptions specified in this law."²¹⁰

It is worth mentioning in this regard that legislation is formulated using legal terminology, and the draft law on access to information is among the terms that will be addressed later in the legislation and do not include the term "third party." So, who is the third party in this context?

Finally, the Palestinian legislator added that the expiration of the deadline without responding to the request is considered a refusal by the official responsible for providing the information. This raises the question, is the negligence of the official in following up on the request for information considered a negative decision to refuse the information, and is that sufficient? The answer to this question is not addressed by the Palestinian draft law, and it should be subject to disciplinary and punitive measures against the official. The Palestinian criminal legislator criminalizes the disclosure of secrets, and therefore, it is appropriate for it to criminalize the official who falls short in his duties due to neglect and failure to perform his duties, in addition to disciplinary responsibility for his failure to fulfill his job duties without a justifiable reason.

Furthermore, extending the period required to respond to a requester's information request due to the multiplicity of the requested information is not acceptable, as stated in the same legislation, which states that "public institutions must keep the information they possess in an organized manner and in a way that facilitates the process of extracting it. Public institutions must also store information electronically wherever possible"²¹¹. In light of this provision, what is the purpose of extending the response period to fifteen days in addition to the originally prescribed period of fifteen days?

²¹⁰ Article (18) of the Palestinian draft law on access to information.

²¹¹ Article (5) of the Palestinian draft law on access to information.

In Yemen, regarding the necessary response period for the official responsible for responding to an information request, it is stated that "the responsible official must respond within fifteen days from the date of submission, and the official may extend this period once for no more than fifteen days if the request includes a large number of information or if accessing the information logically requires consultation with another party. Failure to respond during that period is considered a refusal, and if such an extension is necessary, the official must inform the requester in writing during the original period. Priority is given to requests submitted by journalists and individuals who collect news and work within specific time limits or request information related to issues of public interest or public affairs"²¹².

Regarding referral, the Yemeni legislator stated that "the responsible official may refer the request to another party after notifying the requester during the period specified in Article (19) of this law if it becomes apparent to him that the relationship of that party to the information is greater. In this case, the request is considered as if it was submitted to the referred party at the time it was submitted to the other party, in accordance with Article (19) of this law"²¹³.

In Jordan, the principles of responding to a request for information and the necessary period for it have been regulated. The law states that "the responsible party is required to respond to the request or reject it within thirty days from the day following its submission. In the case of rejection, the decision must be justified and have a reason.

²¹² Article (18) of the Law No. 13 of 2012 on the right to access information.

²¹³ Article (21) of the Law No. 13 of 2012 on the right to access information.

Failure to respond within the specified period is considered a decision to reject the request"²¹⁴.

Regarding Tunisian legislation and the response periods for information requests, it is stated that "the relevant entity must respond to each request for access within a maximum period of twenty (20) days from the date of receipt of the request or the date of its correction. If the access request is related to an on-site inspection of the information, the relevant entity must respond to it within a maximum period of ten (10) days from the date of receipt of the request or the date of its correction. If the response is a rejection, the decision must be in writing, justified, and mention the time limits and methods of appeal and the competent bodies to consider it, in accordance with Articles 30 and 31 of this law"²¹⁵.

If the entity fails to respond to the information request within the above-mentioned period, it is considered a negative decision to reject the request. Therefore, the Tunisian legislator stated that "the failure of the relevant entity to respond to a request for access within the legal time limits provided for in this law is considered an implicit rejection, which opens the door for the requester to appeal the decision of the entity, in accordance with the procedures provided for in Articles 30 and 31 of this law"²¹⁶.

The Tunisian legislator has devised a provision for those who submit more than one request for accessing information, and accordingly, the relevant entity is granted a provision after responding to the request. Therefore, it is stated that "the relevant entity is

²¹⁴ Article (9/b,c) of the Law No. 47 of 2007 ensuring the right to access information.

²¹⁵ Chapter (14) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

²¹⁶ Chapter (15) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

not obliged to respond to the requester more than once in the event of repeated requests for the same information without justification"²¹⁷.

Regarding referral, the Tunisian legislator stated that "if the requested information is available with an entity other than the entity to which the access request was submitted, the person responsible for access must inform the requester of the lack of jurisdiction or refer the request to the relevant entity, within a maximum period of five (5) days from the date of receipt of the request"²¹⁸.

The competent entity can extend the above-mentioned period, and accordingly, it is stated that "the periods mentioned in Article 14 of this law can be extended by a period of ten (10) days, with informing the requester of that, if it concerns obtaining or inspecting several pieces of information with the same entity"²¹⁹.

"If the requested information has previously been submitted by a third party to the relevant entity as confidential, the latter must consult the third party, after informing the requester of the matter, to obtain their justified opinion on the partial or total availability of the information, within a maximum period of thirty (30) days from the date of receiving the access request in writing, along with notification of receipt. The opinion of the third party is binding on the relevant entity, and the third party must provide their response within a period of fifteen (15) days from the date of receiving the consultation request. Failure to respond within the mentioned periods constitutes an implicit agreement from the third party"²²⁰.

²¹⁷ Chapter (16) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

²¹⁸ Chapter (18) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

²¹⁹ Chapter (19) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

²²⁰ Chapter (20) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

It is worth mentioning that the Tunisian legislator, when regulating referral, has specified the legal deadlines that must be adhered to for responding to a request for information. It should be noted that these deadlines are relatively long, as they amount to a total of forty-five (45) days. However, they end with implicit approval of the request for information in case of non-response. The Tunisian legislator has done well in this regard.

The Palestinian Access to Information Bill has also sought to enable persons with disabilities to access information upon request. Accordingly, it is stated that "if the requester is a person with disabilities, the competent employee must provide the information in an alternative format that is suitable for the requester's disability if such format is available in the institution. The competent employee may also convert the information into an alternative format if deemed necessary, and must convert it if the requester accepts to cover the costs"²²¹.

It is noteworthy that the text prioritizes persons with disabilities from the outset, ensuring access to information in a format that suits their disability. This is a good move in ensuring that this group of citizens can access information in a way that meets their needs. However, the Palestinian legislator made a mistake by conditioning the adaptation of information to the requirements of persons with disabilities on the availability of such adaptation in the institution. Receiving information in a way that is adapted to the needs of persons with disabilities is a right of persons with disabilities, and the legislator also erred by placing the cost of converting the information into an adapted format on the requester, who is a person with disabilities. The fundamental principle is that persons with disabilities should be able to access information in a format that is suitable for their needs and type of disability, without any additional costs other than those associated with

²²¹ Article (16) of The Palestinian draft law on the right to access information.

obtaining the information itself. Additionally, the correct term is "persons with disabilities" rather than "persons with special needs." This legal text regarding the right of persons with disabilities to access information in an adapted and facilitated manner should be reviewed in accordance with the Palestinian Law on the Rights of Persons with Disabilities No. 4 of 1999, as well as the Convention on the Rights of Persons with Disabilities, which Palestine acceded to in April 2014. The implementation of these international agreements in Palestine requires legislative and policy-level enforcement, as well as practical application.

In Yemen, efforts have been made to provide information to persons with disabilities, and accordingly, it is stated that "appropriate additional facilitation shall be provided to illiterate and persons with disabilities in the procedures and forms organized for obtaining information"²²².

However, the Yemeni legislator, like others, made a mistake in using the term "persons with special needs" as all people have special needs. The term "persons with disabilities" suggests the interaction between the difficulty (disability) and the social barriers that "hinder" the access of persons with disabilities to exercise their rights, including the right to access information. The State has the responsibility to remove these barriers to ensure that they enjoy equal rights and freedoms with others in all aspects of life. Therefore, disability means "barriers" that impede the rights of persons with disabilities, and these barriers must be removed to ensure the enjoyment of rights, in accordance with the provisions of the Convention on the Rights of Persons with Disabilities and its entitlements at the legislative, policy, and practical levels.

²²² Article (16) of The Palestinian draft law on the right to access information.

In Tunisia, efforts have been made to treat persons with disabilities equally by assisting them. The designated official responsible for access shall provide the necessary assistance to the applicant if they are unable to read or write, or if they are deaf or blind. The access application shall be submitted directly to the relevant structure, accompanied by a receipt issued for this purpose, or by registered mail, fax, or email with acknowledgment of receipt.²²³

The Palestinian Access to Information Act allows the designated official to refer the request for information to the relevant institution, provided that the applicant is notified of this. The law states that "the designated official may refer the request to another institution after notifying the applicant if it becomes clear to him that the other institution is the one that prepared the information or that it possesses alternative formats for the information, in which case the request shall be deemed as having been submitted to the public institution to which the request was referred"²²⁴.

In this regard, the researcher believes that the legal referral of the request from the designated official to the institution containing the information represents a recognition of the right to access information. However, the citizen is caught in an endless cycle of procedures, and the project did not clarify the deadlines, whether they start from the date of receipt of the request by the designated official or from the date of referral of the request to the institution that has the information.

In Morocco, the necessary response times for requests for information in normal and urgent situations are specified. The institution or entity concerned must respond to the request for information within a period not exceeding twenty working days from the

²²³ Chapter (9) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

²²⁴ Article (16) of The Palestinian draft law on the right to access information.

date of receipt of the request. This period can be extended for an equivalent period if the institution or entity concerned is unable to fully or partially respond to the request within the aforementioned deadline if the request concerns a large number of information, or if it is impossible to provide the information within the aforementioned deadline or if its delivery requires consultation with a third party. The institution or entity concerned must notify the person concerned in advance of this extension in writing or by email, specifying the reasons for the extension.²²⁵

Regarding urgent matters, it is stated that the institution or entity concerned must respond to the request for information within a period of three days in cases where obtaining the information is necessary to protect the life, safety, and freedom of individuals, taking into account the extension cases mentioned in Article 16 above.²²⁶

In this regard, the researcher believes that the Moroccan legislator has sought to shorten the duration of obtaining information in urgent cases, limiting it to three days. However, the institution or entity is granted the power to extend this period for up to forty working days, according to the provisions of Dahir No. 15-18-1 issued on February 22, 2018, implementing Law No. 13-31 on the right to access information. This allows for the wasting of urgent requests for information.

Once the request for information is approved, the designated official must immediately allow the applicant to access the requested information and specify the cost of obtaining the information. If the request contains more than one piece of information, the designated

²²⁵ Article (16) of Dahir No. 15-18-1 issued on 22/2/2018 implementing Law No. 13-31 on the right to access information.

²²⁶ Article (16) of Dahir No. 15-18-1 issued on 22/2/2018 implementing Law No. 13-31 on the right to access information.

official may allow the applicant to access a portion of the information if the other information falls within the exceptions specified in this law.²²⁷

In Yemen, the official responsible must allow the applicant to obtain the information and specify the cost, if necessary, in case copies are requested. The Yemeni legislator has made access to information exempt from fees while obtaining copies of the information is subject to a fee.²²⁸

It is also stated that when approving the request, the designated official must provide the applicant with all documents containing the information in paper or electronic form, in the format available to the institution, and as required by the requester.

The designated official is obligated to provide the requested information to the applicant, and if approval is given to provide the information and there are no exceptions that apply, the official is obligated to deliver the information to the applicant. Otherwise, the official is considered to have failed to fulfill their duties and may be subject to disciplinary action.²²⁹

The Palestinian Access to Information Bill requires the official to provide the information to the applicant in the format available to the public institution, whether written or electronic. It is stated that "the designated official must provide the information to the applicant in the format available in the public institution. The official cannot simply inform the applicant of the information without providing the document containing that information. The issued instructions by the General Commissioner specify how the applicant can obtain copies of additional information"²³⁰.

²²⁷ Article (14) of The Palestinian draft law on the right to access information.

²²⁸ Article (19/a) of the Law No. 13 of 2012 on the right to access information.

²²⁹ Article (20) of the Law No. 13 of 2012 on the right to access information.

²³⁰ Article (15) of The Palestinian draft law on the right to access information.

In Yemen, it is stated that if the request for information is made and the information is available in another language or format, it is sufficient to provide the requested information in the language or format in which it is available as long as it contains the requested information.²³¹

Regarding fees, the Palestinian Access to Information Bill addresses fees for requests for information and limits the maximum amount to ten dinars, except in exceptional cases where the limit may be exceeded. It is stated that "fees for requests for information shall be determined by a regulation issued by the General Commissioner and approved by the Council of Ministers. The fee shall not exceed ten dinars or its equivalent in other currencies, unless in the following cases:

- 1- Covering the cost of copies or requested images according to their market value.
- 2- Covering the cost of alternative formats for information according to their market value.
- 3- If the request contains more than one piece of information."²³²

The aforementioned bill specifies the fees required for appeals submitted to the General Commissioner regarding decisions made by the designated official, whether the fees are required in cases where the applicant doubts the value or in cases of rejection, and limits the amount to ten dinars. It is stated that "the fees for appeals must not exceed ten dinars or its equivalent in other currencies, by law".²³³

The researcher believes that the above-mentioned provision has two issues. The first one is that it imposes fees for appeals related to obtaining information, while the standard

²³¹ Article (19/c) of the Law No. 13 of 2012 on the right to access information.

²³² Article (42) of The Palestinian draft law on the right to access information.

²³³ Article (43) of The Palestinian draft law on the right to access information.

practice is for the fees for appeals to be half of the base fee, as is the case with appellate court fees. On the second issue, the bill does not clarify the fate of the fees paid if the General Commissioner decides differently from the designated official, whether in terms of the fees imposed or in terms of allowing access to the information. Justice requires that if the decision was in favor of the applicant, the appeal fee should be refunded to them regardless of the amount, especially since the applicant may resort to appealing due to the official's failure to issue their decision within the legally specified period.

In Yemen, regarding fees for accessing information, it is worth noting that the Yemeni legislator defines fees as the actual cost of copying or photographing the requested information, whether in paper or electronic form, except for any employee time required to organize, highlight, or transfer this information.²³⁴

As for fees for accessing information according to Moroccan legislation, the principle is that access to information is free except in cases where copying is required. It is stated that "except for services provided in accordance with the current regulatory texts, access to information is free, but the applicant for information shall bear, at their own expense, the costs required, if necessary, for copying or processing the requested information and the cost of sending it to them"²³⁵.

In Jordan, with regard to fees for obtaining information, it is stated that "the applicant shall bear the cost of photographing or copying the requested information using technical means, and the applicant shall be allowed to access the information if it is stored in a way that cannot be copied or photographed"²³⁶. The legislation assigns the Council

²³⁴ Article (2) of The Palestinian draft law on the right to access information.

²³⁵ Article (5) of Dahir No. 15-18-1 issued on 22/2/2018 implementing Law No. 13-31 on the right to access information.

²³⁶ Article (11) of the Law No. 47 of 2007 ensuring the right to access information.

of Ministers to determine the fees for obtaining information based on a recommendation from the Information Council. It is stated that "the amount of any compensation paid by the department for photographing or copying the requested information shall be determined by a decision of the Council of Ministers based on the recommendation of the Council"²³⁷.

As for Tunisian legislation, it states that "everyone has the right to access information for free, and if providing the information requires a set of expenses, the requester shall be informed in advance of the need to pay a fee, provided that the amount does not exceed the actual expenses incurred by the relevant institution, and the requested documents shall not be delivered until the fee is paid"²³⁸.

Regarding the applicant, the Palestinian project did not require the applicant to be Palestinian. It also allowed residents to have the right to access information. Therefore, the law stated that "This law aims to:

1. Empower citizens and residents in Palestine to exercise their right to access information held by public institutions in accordance with the provisions of this law.
2. Promoting transparency and accountability in Palestinian public institutions and encouraging openness to the people."²³⁹

In Yemeni law, it is also stated that access to information is a fundamental right of citizens, and citizens may exercise this right within the limits of the law. Foreigners are also allowed to access information provided they are treated equally²⁴⁰. The Yemeni legislature did well in granting this right to both citizens and foreigners, as the right to

²³⁷ Article (18) of the Law No. 47 of 2007 ensuring the right to access information.

²³⁸ Chapter (23) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

²³⁹ Article (2) of The Palestinian draft law on the right to access information.

²⁴⁰ Article (4) of the Law No. 13 of 2012 on the right to access information.

access information is a comprehensive right aimed at improving the overall situation of the country, which positively affects both citizens and resident foreigners.

In Moroccan law, only citizens who hold Moroccan nationality are granted the right to access information and exercise this right under a specific legal provision. Foreign residents who are legally residing in Morocco are granted the right to access information under another article, subject to conditions and procedures specified in this law. Moroccan legislation states that "Moroccan citizens have the right to access information referred to in Article 2 above, considering the exceptions provided for in this law²⁴¹, with due consideration to applicable international agreements ratified or acceded to by the Kingdom of Morocco. With regard to foreign residents legally residing in Morocco, they have the right to access information referred to in Article 2 above, subject to the conditions and procedures provided for in this law"²⁴².

As for Jordanian legislation, this right is limited to Jordanian citizens and is conditional on having a legitimate interest in the request. The law states that "Subject to the provisions of the applicable legislation, every Jordanian has the right to access information requested in accordance with the provisions of this law if he has a legitimate interest or a valid reason"²⁴³.

The researcher in this regard believes that the limitation set by the Jordanian legislature on the right to access information based on Jordanian nationality is unjustified. Most comparative Arab legislation adopts the approach of granting the right to access

²⁴¹ Article (3) of Dahir No. 15-18-1 issued on 22/2/2018 implementing Law No. 13-31 on the right to access information.

²⁴² Article (4) of Dahir No. 15-18-1 issued on 22/2/2018 implementing Law No. 13-31 on the right to access information.

²⁴³ Article (7) of the Law No. 47 of 2007 ensuring the right to access information.

information to citizens and legally residing foreigners, as foreigners have the right to access economic information for those who invest in Jordan. Therefore, it is not practical to deprive foreigners of access to information for legal purposes. The effective legislation in Jordan has addressed the necessary procedures to be taken in case foreigners engage in any behavior that endangers public security, including deportation.

Regarding the legitimate interest of the applicant, it is a provision that contradicts the means of obtaining information. If the request for information is one means, the second means is the proactive disclosure of information by public institutions. Therefore, it is not practical to restrict the right to access information based on whether there is a legitimate interest or not.

On the other hand, a legislative term such as "legitimate interest" opens the door for the competent authority to evade providing information to the requester by claiming the absence of a legitimate interest or delaying the response to the requester under the pretext of investigating the legitimate interest.

In Tunisia, regarding the requirement for obtaining information, it is stated that "Any natural or legal person may submit a written request for access to information in accordance with a pre-prepared written request form provided by the relevant structure, made available to the public on the website or plain paper, including the mandatory provisions outlined in Articles 10 and 12 of this law"²⁴⁴.

It is also stated that "the applicant for access to information is not required to mention the reasons or interests for obtaining the information within the access request"²⁴⁵. This

²⁴⁴ Chapter (9) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

²⁴⁵ Chapter (11) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

demonstrates that the presence of a legitimate interest or even reason is not necessary, and the Tunisian legislature excels in preserving the right to access information.

It is noteworthy that the Tunisian legislature has also stipulated that the requester can be a natural or legal person such as companies and private institutions. The Tunisian legislature has done well by not requiring citizenship as a condition for obtaining information. Additionally, the Tunisian legislature has avoided the condition of status or interest in obtaining information as a requirement for access.

In conclusion, to facilitate the right to request access to information held by public authorities, it is important to establish clear and specific procedures for public authorities to deal with requests for access to information. UN standards call on public authorities to establish a system for accessing information, as well as to set a time limit for responding to requests for information, and provide notifications of the refusal to provide access to information, which must be in writing in the event of refusal, and high fees. The procedures should be quick and simple to enable individuals to access information.²⁴⁶

Having outlined in this article the request for information, the procedures for it, the necessary conditions, and the fee requirement, we move on to the second subsection, where we will discuss the proactive disclosure of information.

Subsection Two: Proactive Disclosure of Information

Proactive disclosure is one of the methods established by access to information laws, where institutions and public entities proactively publish information they hold to the public, without any request from individuals.

²⁴⁶ Michael Carr and Toby Mendel: Establishing freedom of information: An analysis of constitutional protection of freedom of information, March 2012, Page 7.

In this regard, legal jurisprudence has addressed this issue, stating that proactive disclosure of information by the state is a fundamental principle underlying the right to access information, and therefore public entities must commit to publishing information periodically, even if individuals do not request it²⁴⁷.

It is also stated that state institutions must commit to proactive disclosure of information. The obligation to publish goes beyond simply providing information upon request but also extends to the obligation of those institutions to collect information related to their performance and to publish it, even without a request. This enhances the transparency of the governance system and increases public confidence in a system that spares no effort to publish the information it holds²⁴⁸.

Governments engage in proactive disclosure of information to respect the requirements of governance, transparency, performance monitoring, and accountability in public institutions, as well as encouraging people to participate in public life. In this regard, the Palestinian Access to Information draft law states that "This law aims to:

- 1- Enabling citizens and residents in Palestine to exercise their right to access information held by public institutions in accordance with the provisions of this law.
- 2- Promoting transparency and accountability in Palestinian public institutions and encouraging openness to the people."²⁴⁹

In Yemen, "the access to information legislation aims to:

²⁴⁷ See! Mahdawi Abdel Qader: Guarantees of the principle of proactive dissemination of information - a comparative study published on the electronic link:

Asjp.ceist.dz/ar/article/126027 , on 2/8/2022 at 9:00 am.

²⁴⁸ Hamad Jabbar Talib: Master's thesis entitled "The Right to Access Information as a Human Right", College of Law - University of Al-Qadisiyah, Page 264.

²⁴⁹ Article (2) of The Palestinian draft law on the right to access information.

- 1- Securing and facilitating the citizen's right to access information without delay, and expanding the rules for exercising rights and freedoms.
- 2- Enhancing the elements of transparency and expanding opportunities for conscious and responsible participation.
- 3- Empowering society to develop its capabilities for increasing benefit from information."²⁵⁰

Regarding the Tunisian legislature, it states that "This law aims to ensure the right of every natural or legal person to access information for:"

- 1- Accessing information.
- 2- Promoting the principles of transparency and accountability, especially regarding the management of public facilities.
- 3- Improving the quality of public facilities and supporting trust in the structures subject to the provisions of this law.
- 4- Encouraging public participation in developing and monitoring the implementation and evaluation of public policies.
- 5- Supporting scientific research."²⁵¹

In this regard, it is evident from the aforementioned text that the Tunisian legislator has granted the right to access information to every natural or legal person, without specifying their nationality. The practical reality remains the decisive factor in providing information to nationals and foreigners or denying foreigners access to it²⁵².

²⁵⁰ Article (3) of the Law No. 13 of 2012 on the right to access information.

²⁵¹ Chapter (1) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

²⁵² Khadija Khali and Mehdawi Abdelkader: Procedural guarantees for exercising the right to access information in Maghreb legislation, *Law and Society Journal*, Volume (7), Issue (2), 2019, Page 141.

The principle is that information held by the state is subject to disclosure and publication by state institutions, except for what falls within the scope of exceptions that cannot be disclosed or published for specific purposes. Accordingly, the Palestinian Access to Information draft law states that "All information held by public institutions is subject to access, except for what falls within the scope of exceptions"²⁵³.

As for the Yemeni legislator, it addressed proactive disclosure as an indirect method of providing information that the state provides on its initiative. Accordingly, the Yemeni Access to Information legislation states that "Access to information can be direct for those who request it or indirect through proactive disclosure, or both"²⁵⁴.

Proactive disclosure is a fundamental principle underlying the right to access information. The Palestinian Access to Information draft law has adopted it and stipulates that "Public institutions must publish annual reports that include at least:"

- 1- Administrative information about the mechanism of the public institution's work, including costs, goals, audited accounts, rules, and achievements.
- 2- Procedures that individuals can use to learn about the public institution's public policy and projects.
- 3- Types of information that the public institution retains.
- 4- The content of any decision or policy that may affect the people, the reasons for making the decision, and the objectives sought.
- 5- Any other information that the General Commissioner deems necessary to publish."²⁵⁵

²⁵³ Article (2) of The Palestinian draft law on the right to access information.

²⁵⁴ Article (6) of the Law No. 13 of 2012 on the right to access information.

²⁵⁵ Article (7) of The Palestinian draft law on the right to access information.

The researcher in this regard comments on the fourth paragraph of the aforementioned article, which pertains to any decision or policy that may affect the people, the reasons for making the decision, and the objectives sought. Who is authorized to determine the impact of that decision or policy on the people? There is a need to adhere to the freedom of information flow according to the international agreements that Palestine has joined and its entitlements regarding the fundamental right to access information, which is considered a right for society as a whole (the third generation of human rights), as previously mentioned.

The answer to this question is that the public entity is the one authorized to determine the impact of that decision or policy on the people, and it has the authority to publish it or not, whether for legitimate or illegitimate reasons. Therefore, it would have been more appropriate for the Palestinian legislator to adopt proactive disclosure for all information except for what is specifically and exempted, and in accordance with international standards.

In this regard, Aman Foundation has called for the need for the process of information disclosure by the state and its institutions to be the norm, and that classified information should be the exception. In addition, it is necessary to enable access to information by specifying the authorized entity to disclose and provide information and allocate the necessary budgets, material, and human resources for it so that the right to access information becomes a right for the individual and a responsibility of the state²⁵⁶.

In practical terms, the Palestinian Central Bureau of Statistics, for example, has maintained "its commitment to the information disclosure system included in the

²⁵⁶ See! International Day for the Right to Information 2011 published on the electronic link: Aman-palestine.org/activities/472.html , 4/8/2022 at 10:15 a.m.

executive regulations related to disclosure, and has worked on publishing its data through various and diverse means:

1- Traditional publishing, which includes the process of publishing paper brochures in various forms such as reports, wall charts, pocket booklets, fax newsletters, and other forms.

2- Electronic publishing, which includes online publishing through a website, in addition to CDs. The bureau has uploaded all its publications and reports to these discs, allowing them to be easily browsed, viewed, and presented in an attractive and fast manner. The bureau has also provided copies of these editions to various entities inside and outside the country"²⁵⁷.

Currently, many public and private entities are active in publishing information. In addition to the official and private media institutions, and the private sector, there are several official institutions and initiatives in Palestine that are concerned with collecting information and tracking it from various sources, as well as publishing and distributing it. The most prominent of these institutions and initiatives are:

- General Intelligence Services.
- Palestinian Central Bureau of Statistics.
- National Archives.
- Palestinian Legislative Council.
- Palestinian News Agency (WAFA).
- Palestinian Media Center.
- Palestinian Independent Commission for Human Rights.

²⁵⁷ Jabril Mohammed and Nada Haniti: The Citizen's Right to Access Public Information, Report Series 7, Publications of the Coalition for Integrity and Accountability , 2007, Page 8.

- Palestinian NGO Network.
- Palestinian Initiative for the Promotion of Global Dialogue and Democracy (MIFTAH).
- Coalition for Integrity and Accountability- AMAN.²⁵⁸

In specialized fields such as the judiciary, the task of proactive information disclosure has been assigned to the Technical Office of the Supreme Judicial Council. However, this office, which was not originally formed due to the lack of human resources, has not played its role in the regular publication of these principles, which the law requires to be published and includes legal principles issued by the Supreme Court.²⁵⁹

In this regard, some Palestinian jurisprudence believes that proactive information disclosure by government entities should be the norm, and public institutions should be committed to proactive disclosure in a way that contributes to the consolidation of the right to access information in practice and avoids any harm to individuals resulting from the malfunction of the administration and its agencies²⁶⁰.

Some Arab jurisprudence goes further and states that to achieve wider proactive information disclosure, it is necessary to amend legal texts that limit this right and restrict it with the shadows of secrecy, whether that legislation is criminal or related to public employment or otherwise. These texts should be replaced with ones that reveal that

²⁵⁸ Azmi Shuaibi: Freedom of knowledge and information is the basis of transparency and accountability, publications of the Coalition for Integrity and Accountability - AMAN, first edition, February - 2006, Page 19.

²⁵⁹The Right of Citizens to Access Public Information in the Palestinian Judiciary - Report Series (5), February 2007, Page 11.

²⁶⁰ Mohammed Hussein Abu Arqoub: The Palestinian experience in the access to information law project - Palestinian Center for Policy and Media Sources - Internews project in the West Bank and Gaza, 2012, Page 18.

information and require its publication and access, as legislation that limits this right and enshrines secrecy must be eliminated²⁶¹.

In Yemen, it has been stipulated that "the entity²⁶² must provide information evidence that includes at least the following:

1- Administrative information about the entity's workings, including its goals, activities, programs, financial statements, and information related to its official activities and the results of its performance of constitutional and legal duties.

2- Identification of the methods and places where citizens can obtain information, submit requests, access documents, receive and obtain copies, and obtain decisions.

3- An index of all types of information that the entity is legally required to preserve and maintain.

4- A report on requests for information received, those that were fulfilled, those that were rejected, and the reasons for rejection, complaints submitted, the results of such complaints, and the procedures related to the same, including the average number of days taken to respond to information requests.

5- A guide to the subject matter lists that the entities must publish, as well as the dates and methods of their publication.

6- Any additional information that the Commissioner considers necessary to be published for the purposes of this law".²⁶³

²⁶¹ Denis Abdelkader: Freedom of access to information and administrative documents and their impact on the principle of transparency in elections, *Law Journal*, Volume (7), Issue (1), 2018, Page 156.

²⁶² The entity is defined according to Yemeni legislation as "the legislative, executive and judicial authorities, ministries, agencies, institutions, central and local interests, public and mixed sector units, and every entity that is funded in a partial or total manner from the state's general budget."

Article (2) of the Law No. 13 of 2012 on the right to access information.

²⁶³ Article (11) of the Law No. 13 of 2012 on the right to access information.

It has also been stipulated that "the National Information Center must be provided with the information that is published pursuant to Article (11) of this law, and both the entity and the National Information Center must provide this information in paper or electronic form, either for free or at prices that do not exceed the cost of obtaining the information"²⁶⁴.

In Algeria, there has been a focus on proactive information disclosure, stating that "the administration must inform citizens of the regulations and measures that it sets forth, and it must use and develop any appropriate means for publication and communication"²⁶⁵. "It has also been stated that the administration must regularly publish instructions, memos, and opinions that concern its relationships with citizens, except if there are provisions to the contrary in the current regulations. If such publication is not explicitly required in the Official Gazette of the People's Democratic Republic of Algeria, it must be carried out in the official bulletin of the relevant administration, which is prepared and published in accordance with the provisions of the current regulations."²⁶⁶

Regarding proactive information disclosure in Lebanon, the Lebanese legislator has adopted this principle as one of the legal procedures for accessing information without requesting it, and therefore it has been stated that "the administration must publish a ruling on its website in a searchable, copyable, and downloadable format for the following materials and information:"

²⁶⁴ Article (12) of the Law No. 13 of 2012 on the right to access information.

²⁶⁵ Article (8) Decree 88-131 of 4 July 1988 regulating the relationship between the administration and the citizen.

²⁶⁶ Article (9) Decree 88-131 of 4 July 1988 regulating the relationship between the administration and the citizen.

Decrees, decisions, instructions, circulars, and memoranda that include an interpretation of laws and regulations or have a regulatory nature must be published within fifteen days from the date of issuance. The publication must be in the Official Gazette as well as on the administration's website. All these legislative and regulatory materials must also be published in electronic format in the Official Gazette within a maximum of one year from the date of issuance of this law.

In accordance with Article (5) of this law, all operations that involve the payment of public funds exceeding fifty million Lebanese pounds, and this is within one month from the date of completion or one of its installments, must be published. The publication must include the following: the value of the expenditure, the method of payment, the purpose of the expenditure, the entity benefiting from it, and the legal basis for the expenditure, such as tenders, contracts by mutual agreement, and the execution of judicial rulings.

"The salaries and compensations of employees are excluded from the provisions of this article"²⁶⁷.

In Morocco, proactive disclosure has been adopted as a necessary measure to access information, and accordingly, it is stipulated that "each institution and relevant body, within the limits of its competence, must, to the extent possible, publish the maximum amount of information it holds that is not covered by the exceptions set forth in this law, using all available means of publication, particularly electronic gateways for public data, especially information related to the following:"

- Agreements that have begun the process of joining or ratification.
- Legislation and regulatory texts.
- Draft laws.

²⁶⁷ Article (5) of the Law No. 333 amending Law No. 28 of 10/2/2017 on the right to access information.

- Draft financial laws and accompanying documents.
- Proposed laws submitted by members of parliament.
- Budgets of local authorities, accounting, and financial lists related to the management of these authorities and their financial situation.
- The tasks of the relevant institution or body, its administrative structures, and the necessary information to contact it.
- The systems, procedures, journals, and guides used by employees of the institution or body or its users in performing their duties.
- A list of services provided by the institution or body to beneficiaries, including lists of documents, data, and information required to obtain a service, document, or official administrative card, and associated electronic services.
- Rights and obligations of beneficiaries towards the relevant institution or body and the available complaint procedures.
- Conditions for granting licenses and permits and conditions for granting exploitation licenses.
- Detailed results of various polling stations.
- Predictive programs for public procurement and their results if achieved, winners, and amounts.
- Employment competition programs, professional exams, and announcements related to their results.
- Announcements related to opening vacancies for positions of responsibility and senior positions, the list of accepted candidates for the competition, and the results.
- Reports, programs, bulletins, and studies available at the institution or body.
- Economic and social statistics.

- Information related to companies, especially those held by the central commercial register.

- Information that guarantees free and fair competition and is in the public interest."²⁶⁸

The Moroccan legislation has tasked the Right to Information Commission with taking the necessary measures to obtain information through proactive disclosure. This is evidenced by the provision stating that "The Right to Information Commission, chaired by the Head of Government, shall undertake the following tasks:

- Ensuring the proper exercise of the right to information.

- Providing consultation and expertise to relevant institutions and bodies on the mechanisms for implementing the provisions of this law, as well as proactive disclosure of information in its possession.

- Raising awareness of the importance of providing information and facilitating access to it through all available means and methods, especially by organizing training courses for the staff of the relevant institutions and bodies.

- Issuing recommendations and proposals to improve the quality of information access procedures.

- Preparing an annual report on its activities in the field of the right to information, including in particular its evaluation of the results of applying this principle, and publishing it through all available means"²⁶⁹.

As for the Tunisian legislator, it has adopted proactive disclosure of information as a measure and procedure for obtaining information. Accordingly, it has stipulated

²⁶⁸ Article (10) of Dahir No. 15-18-1 issued on 22/2/2018 implementing Law No. 13-31 on the right to access information.

²⁶⁹ Article (22) of Dahir No. 15-18-1 issued on 22/2/2018 implementing Law No. 13-31 on the right to access information.

that²⁷⁰ "Institutions subject to the provisions of this law must periodically publish, make available, and put at the disposal of the public, in a usable format, the following information:

- Policies and programs of public interest.
- A detailed list of services provided to the public, the certificates issued to citizens, the necessary documents to obtain them, and the conditions, deadlines, procedures, parties, and stages related to their provision.
- The legal, regulatory, and interpretive texts governing its activities.
- Its assigned tasks, organizational structure, main and subsidiary headquarters, contact information, and detailed budget.
- Information related to its programs and achievements relevant to its activities.
- A list of the names of those responsible for accessing information, including the data stipulated in the first paragraph of Article 32 of this law, as well as their professional email addresses.

²⁷⁰ Chapter (2) of Basic Law No. 22 of 2016 dated 3/24/2016 related to the right of access to information clarified the structures covered by the provisions of this law, and accordingly it stipulated that "this law applies to the following structures:

- Presidency of the Republic and its structures.
- Presidency of the government and its structures.
- People's Representatives Assembly and its structures.
- Ministries and various structures under supervision at home and abroad.
- central bank
- Public institutions and establishments and their representations abroad.
- Local and regional public structures.
- Local groups .
- Judicial bodies, the Supreme Judicial Council, the Constitutional Court, and the Court of Accounts.
- Constitutional bodies.
- Independent public bodies.

The amending bodies.

- A list of electronically or physically available documents related to the services it provides and the allocated resources.
- The conditions for granting licenses provided by the institution.
- Public contracts and approved budgets and their implementation results.
- Reports by supervisory bodies in accordance with international professional standards.
- Agreements that the state intends to join or ratify.
- Information available on social programs and services."²⁷¹

The Tunisian legislator has obligated the institutions referred to in the law to publish their information on their websites and update it at least once every three months, "taking into account the available resources. Any changes should be updated with the last update date specified. This is in accordance with the provisions of Article 6 of this law"²⁷².

It is worth mentioning that the Tunisian legislator has also obligated institutions subject to the legislation regulating the right to information to proactively disclose information in case a request for it is repeated at least twice. This is in accordance with the provisions of Articles 24 and 25 of this law.²⁷³

In this regard, Tunisian legislation has distinguished itself from other Arab legislations in the proactive disclosure of information, which is a commendable step. Information that is the subject of a request by more than one person is more important than the information requested by a single individual, and therefore it is necessary to proactively disclose it.

²⁷¹ Chapter (6) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

²⁷² Chapter (7) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

²⁷³ Chapter (6) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

The same legislation has also obligated the Access to Information Authority²⁷⁴ to publish its decisions on its websites and monitor the implementation of information disclosure regulations. Accordingly, it stipulated that "The Authority shall be responsible for..."

The Access to Information Authority is responsible for publishing its decisions on its website and monitoring compliance with the obligation to proactively disclose information in accordance with the provisions of Articles 6, 7, and 8 of this law. This may be done either by the Authority on its initiative or as a result of complaints from third parties (from others)²⁷⁵.

The Palestinian Access to Information Bill also obligates public and private industrial institutions to disclose information related to the environment²⁷⁶, health, and public interest. The legislation stipulates that "Public and private industrial institutions shall publish biannual reports, which shall include at least the following information:"

1. The locations of the used toxic materials, their nature, and risks.
2. The amount of emissions generated by the manufacturing process.
3. The methods of waste disposal"²⁷⁷.

²⁷⁴ The Access to Information Authority: It is an independent public authority with a legal personality and its headquarters in Tunis.

Chapter (37) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

²⁷⁵ Chapter (38) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

²⁷⁶ The right to access environmental information in this regard means: "that legal machine whose owner is authorized to view and obtain information related to the environment in any form, or it is one of the procedural environmental rights of a person that gives its owner the right to claim the authorities that possess information related to the environment."

Widad Atwi and Issa Haddad: Planning and development schemes as tools for establishing the right to access environmental and urban information, *Journal of Scientific Research Papers*, Volume (7), Issue (1), 2019, Page 166.

²⁷⁷ Article (8) of The Palestinian draft law on the right to access information.

The criminal legislator indirectly addressed proactive disclosure of environmental²⁷⁸ information by including the principle of information and participation in the Access to Information law. The legislation stipulates that "This law is based on the following general principles: the principle of information and participation, by which every person has the right to be aware of the state of the environment and to participate in prior procedures when making decisions that harm the environment"²⁷⁹.

In this regard, some Algerian legal scholars believe that mass media technology should be utilized for environmental issues, whether in terms of news related to the environment, conferences, or raising public awareness about the right to the environment and access to environmental information²⁸⁰.

The Palestinian project has also emphasized the public nature of general meetings, stating that "every public institution intending to hold a general meeting must announce the date, place, and purpose of the meeting, and the public cannot be prevented from attending except in the exceptions specified in this law²⁸¹." Public (open) meetings are among the most prominent features of the national integrity, governance, and transparency system in performance. Like others, they require legal mechanisms and procedures to ensure the safety and effectiveness of implementation in practical practices.

²⁷⁸Article (7) of Law No. 10-03 dated July 19, 2003 related to the protection of the environment within the framework of sustainable development stipulates that every natural or legal person who requests information related to the state of the environment from the relevant bodies has the right to obtain it. This information may relate to all data available in any form related to the state of the environment, regulations, measures and procedures directed to ensure the protection and regulation of the environment. Determines how this information is communicated by organization.

²⁷⁹ Article (3) of the Law No. 03-10 of 19 July 2003 concerning the protection of the environment.

²⁸⁰ Farid Ben Bouabdellah: Access to environmental information, *Scientific Research Journal on Environmental Legislation*, Issue (8), 2017, Page 64.

²⁸¹ Article (9) of The Palestinian draft law on the right to access information.

In the Algerian context, municipal meetings have been touched upon in this regard, stating that "the municipality constitutes the institutional framework for practicing democracy at the local level and neighborhood management. The municipal council takes all measures to inform citizens about their affairs and consult them on the options and priorities of economic, social, and cultural development and preparation, according to the conditions specified in this law. In particular, available media means can be used, and the municipal council can present a presentation of its annual activity to citizens"²⁸².

"The legislative treatment of this right in Algeria has remained rigid since the 1988 decree, as no general text has been issued to regulate the matter, except for some scattered provisions in local administration laws, public procurement law, anti-corruption and anti-fraud law, and finally, executive decree 16/190, which only covers a small aspect of this right, namely access to extracts of the proceedings of the municipal council and municipal decisions. The decree is extremely brief, containing only 13 articles that are insufficient to keep up with social, economic, and technological developments, and consequently, administrative developments in the matter"²⁸³.

Proactive disclosure of information "finds its grounding in the concept that the right to access information is a democratic concept, and its purpose is to identify the state's management of its affairs and the information related to it. In other words, the relative concept cannot be reduced or expanded, as the right to access information is

²⁸² Article (11) of the Law No. 11-10 of 22 June 2011 concerning municipalities, published in the Official Gazette No. 37 of 3 July 2011.

²⁸³ Abdelrahman Boukthir: Towards a real consolidation of Article 51 of the Algerian Constitution "The Right to Access Information and Administrative Documents", Faculty of Law and Political Science - University of M'sila, Page 191.

comprehensive for all individuals in society, since the information is public and concerns the public and the state in which they live"²⁸⁴.

It is worth mentioning that "preemptive disclosure is a means of revealing information and works more efficiently than individual requests for information by citizens, in terms of the number of people who receive the information. It also does not represent an administrative burden on the government in dealing with those requests. Preemptive disclosure facilitates the procedures for requesting access to information, as the requester has full knowledge of the details of the document or information, including its location, description, and the relevant government agency that owns the document"²⁸⁵.

In this context, it can be said that preemptive disclosure of information contributes tangibly to reducing requests for access to information and thus reducing the burden on employees receiving and studying these requests. The desired goal of requesting access to information is eliminated by publishing the information and enabling the public to access it, thereby promoting transparency in the governing system.²⁸⁶

The organization Article 19 has developed a set of standards that must be met in legislation related to the right to access information, including preemptive disclosure. Among those standards are:"

1. Maximum disclosure limit: Legislation on the right to access information should be guided by the principle of maximum disclosure limit for the law to be effective and have a real impact.

²⁸⁴ Fatima Zahra Qarmoush: The right to access information in Western and Arab countries - concept and legislative frameworks, Page 431.

²⁸⁵ Rehab Farid Ahmed Mohamed: The right to access information - a comparative study, National Center for Legal Publications, first edition, 2020, Page 219.

²⁸⁶ Mohamed Ali Al-Rakraki: The right to access information, Journal of Law and International Business, Issue (23), 2019, Page 16.

2. Mandatory publication of information: Public bodies should be required by law to publish basic information.

3. Promoting openness policy: Public entities should play a role in promoting openness"²⁸⁷.

According to this principle, government entities should not only disclose information upon request but also routinely and automatically publish certain categories of information, for example.:

- Administrative information about the workings of the government entity, including costs, objectives, audited accounts, rules, achievements, etc., especially when the government entity provides direct services to the people.
- Information about every request, complaint, or direct action that citizens may see as related to the government entity.
- Guidelines on procedures that individuals can use to participate in public policy and law projects.
- Types of information that government entities retain and the cases they retain.
- The content of any decision or policy that may affect the people, with the reasons for making the decision and the background of the important materials used to formulate it"²⁸⁸.

Proactive disclosure of information by public institutions and entities originated from the viewpoint of some legal scholars after recognizing the freedom of opinion and expression

²⁸⁷ Mohammed Hussein Abu Arqoub: Research paper entitled "The readiness of Palestinian media institutions to use the right to access information law", Birzeit University, First edition, 2016, Page 14.

²⁸⁸ Ahmed Azat, Reham Zein, Sarah Al-Masri, Ruaa Ibrahim, and Emad Mubarak: Freedom of Information Exchange - Comparative Legal Study, Freedom of Thought and Expression Foundation, 1st edition, 2011, Page 24.

and the resulting expansion of freedom of the press and communication, which led to a tendency among public institutions to publish public information spontaneously and voluntarily²⁸⁹.

Proactive disclosure of the information is a duty for state public institutions for all information in their possession unless it is within the exceptions provided by law. In this regard, public institutions are responsible for proving that the information is within the exceptions and providing the legal text for that. This principle has several consequences, including:"

1. The term "information" should be broadly interpreted to include all documents held by the public entity, regardless of their form (document, tape, electronic recordings, etc.), their source, and the date of their creation or production. The interpretation should also extend to classified information, not by accepting the classification description provided by the public entity, but by subjecting it to examination by a special body authorized to consider appeals from the public to ensure its confidentiality and that it cannot be disclosed to the public.

2. The interpretation of the term "public entities" should include all branches and levels of government, including local government, elected bodies, and public bodies operating under an official mandate. The interpretation should also include judicial and legislative bodies, as well as private sector bodies engaged in public works such as road maintenance and railway work. In addition, the interpretation should cover private sector entities that hold important information related to public interests, such as the environment and health.

²⁸⁹ Luay Abdel Fattah: The right to access public information between provision and activation requirements, Faculty of Legal, Economic and Social Sciences in Oujda and the Center for Human and Social Studies and Research in Oujda, 2012, Page 170.

3. The obligation is to disclose the documents themselves upon request, not just the information they contain"²⁹⁰.

Some legal scholars argue that individuals may be able to practice preemptive disclosure of information even if it is not explicitly stated in the legislation regulating the right to access information. They believe that individuals can access government information through the information published by those institutions that seek to publish information through their official websites, bulletins, reports that show their work system and financial budgets²⁹¹.

We respectfully disagree with the above legal opinion, as relying on government entities cannot be the basis for accessing and obtaining information. Arab legislation regulating the right to access information has evaded its people for many years until it was enacted. Many of these laws remained unenacted, which led to individuals being unable to hold corrupt individuals accountable²⁹².

On one hand, many of those countries deliberately included legal loopholes in their legislation regulating the right to access information, which hindered the ability of

²⁹⁰ Bilal Al-Barghouthi: The Right to Access Information or Freedom of Information, An-Najah University Library / Al-Haram Al-Jadid, Nablus, Law Development Project Series, Page 12.

²⁹¹ Miftah Mohammed Diab: Information, the right to access it, and its impact on combating corruption in society and state institutions, Bibliophilia Journal for Library and Information Studies, Issue (5), 2020, Page 113.

²⁹² For example, on 4/2/2011, the British Guardian newspaper published in its headline that experts estimate that the Mubarak family's wealth may reach \$70 billion, and the newspaper added that the Egyptian president owns money in Swiss and English banks, as well as real estate in England. and the United States of America.

Despite the passage of years since the Guardian investigation, the Egyptians still do not know anything about the wealth of their former president or any of his family members. of human rights, given that Egypt is addressed by its provisions and has a duty to implement them as national laws.”

Towards a Law on the Freedom of Information in Egypt, Public Budget Observatory and Human Rights, Public Policy Papers, 2015, Page2.

individuals to access information, whether it be in terms of the time frame for obtaining information, the status and interest in the request, citizenship requirements, or the exceptions and some requests being referred to security agencies for review.

On the other hand, preemptive disclosure of information should keep up with the digital development in the digital judiciary. If the principle is that "the administration must take the initiative to inform citizens about its activities in various fields and regularly publish instructions, budgets, and decisions that concern individuals and any measure aimed at facilitating the communication of citizens," then countries must take the initiative to publish information using all available technological means and leverage technology in disseminating information in a way that is easily accessible by a large number of individuals. Preemptive disclosure of information cannot achieve its goal without the public's greater awareness of it²⁹³.

Having discussed proactive disclosure of information as one of the means of accessing information through the public authorities' initiative to publish information even if not requested, and the establishment of this principle in the majority of Palestinian and Arab comparative legislation regulating the right to access information, we now move on to the second section, which is the exceptions of the right to access information.

Section Two: Exceptions of the Right to Access Information

The right to access information, like other rights, is not absolute, as exceptions may be made based on the need to maintain confidentiality in the interest of public welfare. The crucial factor is always the degree of consistency with international agreements and standards in dealing with such exceptions.

²⁹³ Reda Hamissi: Guaranteeing the right of access to information in light of Moroccan constitutions, *Journal of Legal and Political Sciences*, Issue (14), 2016, Page 247.

At the same time, the right to access information may conflict with individuals' rights (the right to privacy). Therefore, the legislature is obliged to strike a balance between these rights when they overlap, preserving individuals' privacy rights and ensuring they are not compromised. This is why the right to access information is subject to some exceptions.

Based on the above, and for the purpose of achieving the desired goal of this section, we will divide it into two subsections. In the first subsection, we will address the exceptions provided for the right to access information in the public interest, while in the second subsection; we will discuss the exceptions provided for private interests.

Subsection One: Exceptions Provided for the Public Interest

Regulations governing the right to access information aim to include several exceptions that prohibit this right for the purpose of maintaining the confidentiality of such information and not disclosing it, as this could have negative effects on countries. International treaties regulating this matter have recognized the authority of national legislation to include legal provisions that restrict this right for various considerations, to protect the highest interests of the state from being compromised in case of disclosure of such information, including the confidentiality of information.

This can be observed through Article 19(3) of the International Covenant on Civil and Political Rights, which states that "the exercise of the rights provided for in paragraph 2 of this article [freedom of opinion and expression, including the right to access information] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order, or of public health or morals.

This text should be read in light of the "three-part test" on how to deal with such controls and restrictions in international standards (legality, necessity, proportionality), meaning that the restriction should be clearly and specifically stated in the law and not contain vague terms, and should be consistent with international standards. The restriction should aim to protect a legitimate and recognized interest in democratic systems and should be proportional to the interest to be protected, without expanding it and depriving the right to access information of its content. Each stage of the three-part test must be successfully passed for any provision or restriction in-laws to be legitimate in accordance with international agreements and standards related to the right to access information. Based on the principle that the default is freedom and flow of information, any exception or restriction must comply with the three-part test, and thus, failure at any level of the three stages means that the provision or restriction in laws is illegitimate in international agreements and standards, and constitutes a violation of the right to access information. It is important to pay close attention to this crucial three-part test when dealing with restrictions in international standards.

Some aspects of jurisprudence view the right to access information as an essential right, as the right to access information is considered one of the most important civil and political human rights that international and regional treaties have sought to establish and enshrine in international human rights agreements. However, the right to access information, like other rights and freedoms, is not absolute according to international standards. International treaties allow for restrictions and exceptions to be imposed on the exercise of this right within certain limits, by granting states the authority to refuse to

disclose any information or confidential documents and papers to maintain public order, national security, or the highest interests of the state²⁹⁴.

In this regard, secrecy is the main justification adopted by legislation to restrict the right to access information. Some aspects of jurisprudence view secrecy as "one of the justifications used by executive state agencies and institutions to create some ambiguity around their activities and conceal information related to them to ensure their independence and carry out their work without interference or scrutiny from the public²⁹⁵. This approach is contrary to international standards and state obligations.

Therefore, some aspects of jurisprudence see that withholding and concealing information from the public is usually motivated by fear, doubt, time constraints, and the limited control of employees over their activities and the information held by the institutions they work for. If secrecy hinders the monitoring carried out by the public, it also hinders the monitoring that the government must carry out. Additionally, expanding the principle of secrecy in administrative work harms the effectiveness of protecting some information that needs protection and secrecy²⁹⁶.

In Palestine, several exceptions have been decided in this regard, including the necessity of preserving national security and maintaining public order. Therefore, it has been stated that "the relevant official should refuse to disclose any information if it is

²⁹⁴Sakina El Boutahri, Iman Iskass, Othmane Sfiani, and Aamir Al-Habib: The right to access information and professional secrecy, Faculty of Legal, Economic and Social Sciences - Mohammed V University in Rabat, 2017/2018, Page 10.

²⁹⁵ Tahani Hassan Ezz El-Din Ahmed Saleh: The Right to Access Information - Means, Restrictions, Obstacles, Abuses, Protections - A Comparative Study, National Center for Legal Publications, 1st edition, 2020, Page 141.

²⁹⁶ Radwan Salamane: The journalist's right to access and obtain information sources: between international laws and national legislation, Journal of Humanities, Volume (36), Issue (37), 2014, Page 144.

proven that this disclosure affects the defense capabilities and national security of the state, and this includes:"

- 1- Weapons, tactics, strategies, and military forces aimed at protecting the country.
- 2- Intelligence information related to thwarting hostile acts and crimes against national security, both domestically²⁹⁷ and internationally²⁹⁸, in accordance with applicable laws.

²⁹⁷ The following crimes are considered crimes against the internal security of the state according to the Penal Code in force in Palestine:

- 1- Assaulting the life or freedom of the king, the crown prince, or one of the guardians of the throne.
 - 2- Working to change the constitution illegally.
 - 3- Provoking armed insurrection.
 - 4- Assault with the intention of preventing the authorities from exercising their functions derived from the Constitution
 - 5- Conspiracy to commit a crime against the internal security of the state.
 - 6- The usurpation of political or civil authority or military leadership.
 - 7- Forming armed factions or commanding soldiers and equipping them with weapons without the consent of the authority.
 - 8- Provoking civil war or sectarian strife
 - 9- Presiding over armed gangs.
 - 10 - Participation in armed gangs drawn to stir up sedition.
 - 11- Manufacture or possession of explosive or inflammable materials or toxic or incendiary products with the intent to commit sedition crimes.
 - 12- Conspiracy to commit a crime of sedition
 - 13- Terrorist crimes.
 - 14- Establishing associations with the intent of changing the economic or social entity of the state or the political conditions of society
 - 15- Provoking strife or inciting conflict between sects
 - 16- Belonging to an association established to undermine national unity.
 - 17- Undermining confidence in the strength of the state's criticism or basing it on fabricated facts or false allegations.
 - 18- Encouraging the public to withdraw money from banks or sell state bonds.
- Chapter Two of Part One, entitled Crimes Against the Internal Security of the State, Articles (135 to 153) of the Jordanian Penal Code No. (16) of 1960.

²⁹⁸ The following crimes are considered crimes against the internal security of the state according to the Penal Code in force in Palestine:

- 1- Carrying arms and carrying out aggressive acts against the state for the benefit of the enemy.

3- International communications and correspondences related to defense affairs and military alliances.

4- "Any information that the General Commissioner is convinced would harm public security and order"²⁹⁹.

2- Pushing a foreign country to aggression by intrigue

3- Intrigue the enemy and contact him.

4- Damage to anything of a military nature or intended for army use with the intent of paralyzing national defence.

5- Attempting to carve out part of the Jordanian lands to annex them to a foreign country

6- Assisting enemy soldiers and their spies, and facilitating the shrine of detained enemy prisoners or nationals.

7- Violating neutrality measures and disturbing the Kingdom's relations with a foreign country.

8- Attempting to overthrow the constitution of a loyal foreign country or to change the existing systems in it.

9- Recruitment to fight for the interest of a foreign country.

10- Inciting the soldiers of a loyal foreign country to desertion or disobedience.

11- Insulting a foreign country, slandering, slandering, or slandering its president, ministers, or political representatives.

12- Entering a prohibited place with the intention of obtaining concealed documents

13- Theft or obtaining concealed documents.

14- Disclosing confidential documents and information without a legitimate reason.

15- Contracting or attempting to conclude commercial deals with one of the enemy's nationals or residents of the enemy's country.

16- Contributing to a loan or subscribing to an enemy country

17- Concealment or embezzlement of funds of an enemy country or its nationals.

18- Weakening national sentiment and awakening spontaneous or sectarian gaps.

19- Broadcasting false news that undermines the prestige of the state, the king, or the crown prince abroad.

20- Crimes of transgressors in wartime.

21- Cheating in the implementation of commitments in times of war.

Chapter One of Part Two, entitled Crimes Against the External Security of the State, Articles (110 to 134) of the Jordanian Penal Code No. (16) of 1960.

²⁹⁹ Article (19) of the Palestinian draft law on access to information.

The researcher in this regard sees that exceptions from the first to the third category are worthy of protection regarding the type of weapons and the size of the forces. However, this should not be extended to allow for withholding information that does not affect national security, such as the budget spent on those weapons and their associated deals. Therefore, these issues must be clearly defined in the law, away from vague terminology in accordance with international standards.

In this regard, the majority of countries agree that information related to military forces, such as their formation, movements, equipment, supplies, personnel, and anything related to military affairs that touches on national security or defense, is considered a secret. Therefore, the public, including individuals who are not related, cannot have access to this information. The restrictions on disclosing this type of information have increased with the growing importance of government interests and the need to maintain their confidentiality in the face of the resurgence of terrorism and its increasing operations, and the efforts made by governments to prevent it³⁰⁰. However, this must be done in accordance with international standards regarding restrictions in this regard.

On the other hand, the Palestinian project has banned information related to international correspondence and communication related to defense affairs, without considering reciprocity. It would have been more appropriate for our national legislator to investigate the texts and not impose secrecy from the Palestinian side if the other side makes such information a condition for obtaining it. Any restriction mentioned in the legislation should be subject to "triple examination" as mentioned above.

³⁰⁰ Kabour Saadani: The right to access information in light of the draft law 31.13, Al-Manar Journal for Legal and Administrative Studies, Issue 19, 2017, Page 106.

In addition, the fourth paragraph of the aforementioned text exempts information that the General Commissioner believes would harm public security and order, and grants the General Commissioner the right to "seek clarification from senior state officials such as ministers and those in power about the reason for withholding information if this withholding is the result of orders issued by them directly, and when he is not convinced of the justifications presented, to submit an immediate report to the President of the Authority, the Prime Minister, or the Legislative Council to take appropriate action"³⁰¹.

Upon analyzing the aforementioned text and its exceptions, we find that the Palestinian project did not provide any mechanism for communicating with the General Commissioner to convince him of the confidentiality of such information and its impact on public and national security. The last paragraph allowed the Commissioner to inquire about the reason for withholding the information, which assumes that it has already been withheld by administrative authorities, and then inquire about the reason for withholding it, rather than convincing the Commissioner of the confidentiality of the information. The publication of such information would endanger the security of the state, and there is a legislative deficiency that must be addressed.

The Palestinian legislator has also included another exception regarding the right to access information related to another country or international organization, stating that "the relevant employee must refuse to disclose any information related to a foreign country or organization that has agreed to keep this information confidential"³⁰².

It is worth mentioning that the Palestinian legislator mentioned the phrase "foreign organization" without specifying whether it is governmental or non-governmental, as

³⁰¹ Article (19) of the Palestinian draft law on access to information.

³⁰² Article (40/4) of the Palestinian draft law on access to information.

seen in other legislations. Therefore, it is not possible to withhold information related to a foreign organization in that formula, as there may be foreign organizations that violate the law. The text did not adhere to international standards in those regulations, as in previous texts, despite the importance of "triple examination" in determining their legitimacy. This is an issue that needs to be reviewed in this project to ensure its consistency with international treaties.

On the other hand, the Palestinian project did not restrict the exception to whether the organization or country for which information is sought to be withheld is subject to exceptions or not, which is illogical to withhold information related to a foreign country based on an agreement to keep that information confidential if the other country allows the publication of that information. Therefore, the researcher believes that there is a legislative deficiency that must be addressed, and the project should explicitly link the handling of restrictions to international standards.

It is worth mentioning that the Palestinian legislator has set a specific time limit of twenty years for those exceptions, after which that information can be disclosed unless the General Commissioner decides that it is necessary to keep them confidential for a renewable period. Accordingly, it has been stated that "the designated official may not refuse to disclose information in the cases mentioned in articles 19 and 20 of this law if such information is still held by the institution and dates back more than twenty years, except in cases where the General Commissioner is convinced of the need to keep this information confidential for another renewable period"³⁰³.

In this regard, the researcher believes that the process of limiting the aforementioned exceptions with a period is a good thing and credit is due to the Palestinian project for

³⁰³Article (21) of the Palestinian draft law on access to information.

that. However, adding the possibility of renewal based on the powers of the General Commissioner is criticized from two perspectives. The first perspective relates to the period that the Commissioner may include in the exception. Does he have the right to extend the exception period beyond the original period of twenty years or not?

On the other hand, who is the supervisory authority over the decision of the General Commissioner in this regard, and what are the criteria that must be met to maintain the confidentiality of the information? Therefore, the researcher believes that it is more appropriate for the Palestinian legislator to assign this task to a council composed of at least three individuals from various authorities to decide on renewing the exception period or not, and not to assign this task to the Commissioner appointed by the executive authorities in the first place³⁰⁴.

Moreover, the Palestinian project has limited the institutions that conduct investigations from disclosing information related to the investigation. This means that the disclosure of information that affects the course of the investigation and may harm it is subject to exception.

Accordingly, the Palestinian project states that "the designated official in institutions that undertake the task of investigating crimes and detecting violations and performing police duties has the right to refuse to disclose the information if such disclosure harms the investigations and the performance of the required tasks"³⁰⁵.

³⁰⁴ "The office is headed by the Commissioner General of Information, who is appointed by a decision of the Prime Minister and approved by the Palestinian Legislative Council for a period of four years, renewable for one time only..."

Article (35) of the Palestinian draft law on access to information.

³⁰⁵ Article (22) of the Palestinian draft law on access to information.

In this regard, some aspects of Arab jurisprudence believe that the principle of confidentiality applies to the stage undertaken by the public prosecutor's office as it is the primary investigating authority with the assistance of judicial officers and investigators, known as preliminary investigations or those undertaken by investigating judges as representatives of the public prosecutor's office. Criminal laws impose confidentiality on these investigations³⁰⁶.

Another aspect of Palestinian jurisprudence believes that "the public interest should prevail over individual interest, and the need for public opinion and its legitimate right to access judicial events and news at an early stage, especially if criminal prosecutions accompany political or economic issues related to public affairs, such as administrative and financial corruption cases, for example"³⁰⁷.

Here, the researcher believes that applying the principle of confidentiality to crimes related to individuals is appropriate as a guarantee to preserve the sanctity of their private lives while generalizing the principle of confidentiality to crimes that occupy public opinion and are related to the management of public facilities cannot be subject to exception and the publication of investigation information should not affect the presumption of innocence enjoyed by the accused in all crimes.

In addition, the stage of confidentiality for investigations is limited to the investigation stage and not the trial. Therefore, trial sessions and procedures must be public. In this regard, some aspects of jurisprudence believe that transparency should prevail in judicial

³⁰⁶Zaabat Al-Taher: The citizen's right to access information, Master's thesis in Human Rights and Public Freedoms Law, Kasdi Merbah University of Ouargla - Faculty of Law and Political Science - Law Department, 2013-2014, Page 22.

³⁰⁷ The Right to Access Information in the Judiciary, Report Series (47), Coalition for Integrity and Accountability - AMAN, January 2012, Page 1.

proceedings, including trials and their sessions. The principle of transparency means providing the necessary means for the public to attend the trial proceedings in the courtroom, regardless of their level of interest or connection to the trial.³⁰⁸

The Palestinian legislator has also provided another exception to the right to access information and the refusal to disclose it, which is related to matters concerning economic security. Accordingly, the Palestinian project states that "the designated official may refuse to disclose any information that contains:

1. Professional or business secrets related to the institution.
2. Secrets that, if disclosed, would cause material damage to the economic interests of the state or its ability to manage the national economy, or result in private gains for an individual or entity. This includes:

- Exchange rates of the Palestinian currency.
- Expected changes in customs tariffs, taxes, fees, and any other revenue sources.
- Expected changes in interest rates related to government loans.
- Expected changes in the prices of government-owned properties, such as stocks, movable assets, and real estate.
- Deals that the public institution intends to make regarding a commodity, the disclosure of which may affect the prices of that commodity in the market"³⁰⁹.

The Palestinian legislator has prohibited the disclosure of information related to the internal affairs of institutions and their relationship with their employees, including

³⁰⁸ . Asaidani Salami: The Legal Dimension of Freedom of Information Exchange in the Kingdom of Saudi Arabia - A Descriptive Perspective from an Media Viewpoint, *Maton Journal*, Volume (11), Issue (3), 2020, Page 196.

³⁰⁹ Article (23) of the Palestinian draft law on access to information.

internal orders, discussions, and preliminary proposals. The designated official may refuse to disclose such information³¹⁰.

The researcher questions the purpose of prohibiting and exempting this type of information from the right to access it. Some information that affects society may be formulated through internal information of institutions and their internal affairs. This type of exemption "fails" in the triple test of international standards, meaning that we are faced with a definite violation of the right to access information. It should be reminded, again, that violating this right constitutes a "constitutional crime" that requires accountability and compensation if it causes damage resulting from this violation.

The Palestinian project has exempted unconfirmed information about natural disasters and infectious diseases that weaken the possibility³¹¹ of their occurrence. The designated official may refuse to disclose such information, as well as any information that may compromise the safety of individuals if disclosed³¹².

In this regard, we see that the Palestinian project aims to prevent the spread of rumors in this area due to their significant impact on the general public, especially if such information is obtained from the state. However, it would have been more appropriate for the Palestinian project to oblige the relevant authorities to raise awareness about such exceptional cases, even if they are unconfirmed. The experience of COVID-19 has shown the fragility and weakness of specialized agencies in dealing with pandemics. While the Minister of Health, Dr. Mai Alkaila, reassured our people that everything was under control and that Palestinian medical facilities were ready to deal with the pandemic, the

³¹⁰ Article (25) of the Palestinian draft law on access to information.

³¹¹ Article (26) of the Palestinian draft law on access to information.

³¹² Article (27) of the Palestinian draft law on access to information.

public was surprised by subsequent statements after the emergence of several cases, revealing that the number of intensive care beds available to deal with critical cases did not exceed two hundred and that there were not enough oxygen devices to deal with critical cases, in addition to providing isolation centers that were not suitable for isolating animals. This constitutes a clear violation of the right to access information. It should be noted that ensuring the right to access information, resorting to platforms for verifying false news, raising awareness, and educating people about them, contributes effectively to ensuring rights in disasters, reducing rumors, and respecting international standards in this regard.

On the Yemeni front, all exceptions related to the right to access information for public reasons have been ensured in the context of one article. Accordingly, it has been stated that "while taking into account the provisions of Articles (4, 19, 20/4, 23, 27) of this law, the responsible employee must refuse any request for information if it contains:"

1. Details about weapons, defensive tactics, strategies, secret military forces, or military operations aimed at protecting the country.
2. Secret matters related to foreign policy dedicated to defense affairs and military alliances.
3. Information exchanged with another country that has agreed to keep the information confidential before exchanging or granting this information.
4. Information whose disclosure would cause significant harm and its concealment helps to:
 1. Prevent or detect a crime.
 2. Arrest or prosecute criminals.
 3. Administer justice.

5. Information whose disclosure would lead to the identification of a confidential source of information, law enforcement officials have pledged to maintain its confidentiality.

6. Electronic information whose disclosure would result in the breach of protected networks and equipment and expose them to erasure or theft.

7. Information of a commercial, financial, industrial, scientific research, or technological nature, the disclosure of which would violate the right of the author and intellectual property or fair and legitimate competition, or would result in illegal gain or loss for any person or company"³¹³.

In this regard, the Yemeni legislator is criticized for the ambiguous exceptions that carry within them the flexibility that leads those addressed by its provisions to consider such information as subject to exception and not to disclose it to the requester. Sometimes the term "secret matters" is used, and sometimes the term "exchanged information", and at other times the term "information whose disclosure would cause significant harm" is used.

As for the Jordanian legislator, the exceptions related to the right to access information were mentioned, and it was stated that "while taking into account the provisions of the applicable legislation, the responsible person must refrain from disclosing information related to the following:"

1. Secrets and documents protected under any other legislation³¹⁴.
2. Documents classified as confidential and protected, obtained by agreement with another country.

³¹³ Article (24) Law No. 13 of 2012 on the right to access information.

³¹⁴ Secrets and documents protected in this regard mean "any oral information, written document, printed, shortened, or printed on waxed paper, copiers, recording tapes, photographs, films, plans, drawings, maps, or the like classified in accordance with the provisions of this law."

Article (2) of the Law No. 50 of 1971 on the protection of state secrets and documents, published on page 1164 of Official Gazette No. 2315 of 1/8/1971.

3. Secrets related to national defense, state security, or foreign policy.
4. Information and personal files related to educational, medical, employment records, accounts, bank transfers, or professional secrets.
5. Personal and confidential correspondence, whether postal, telegraphic, telephonic or via any other technological means, with government departments and the responses to them.
6. Information that includes analyses, recommendations, proposals, or consultations provided to the responsible person before a decision is made on them, including correspondence and information exchanged between different government departments on them.
7. Information whose disclosure would affect negotiations between the Kingdom and any other country or entity.
8. Investigations conducted by the public prosecution, judicial police, or security agencies regarding any crime or case within their jurisdiction, unless authorized by the competent authority to disclose them.
9. Information of a commercial, industrial, financial, or economic nature, as well as information about tenders, and scientific or technological research, the disclosure of which would violate the right of the author and intellectual property or fair and legitimate competition, or would result in illegal gain or loss for any person"³¹⁵.

The Jordanian legislator is criticized for its first exception, which concerns secrets and documents protected under other legislation. The principle should be that the legislation concerning access to information should consider the right to access information as the

³¹⁵ Article (13) of the Law No. 47 of 2007 on ensuring the right to access information, published on 17/6/2007.

rule and the exception as non-access to information. This would require amending the existing legislation to arrive at the general rule, which is the comprehensive right to access information.

The Jordanian legislator also exempted information whose disclosure would affect negotiations between the Kingdom and any other country or entity from the context of the right to access information. This exception is not limited to negative effects or effects on security, which opens the door for abuse of this exception under the pretext of affecting negotiations.

This negative impact was reflected in Jordanian society, and the controversy surrounding the gas agreement with the occupying state is perhaps the biggest evidence of the inadmissibility of including this provision in the exceptions. If the general public had known about the agreement before it was signed, the competent authorities might not have signed it in the first place.

Regarding the Tunisian legislator, it also included exceptions to the right to access information. It stated that "the relevant entity cannot refuse a request for access to information except if it would cause harm to public security, national defense, or international relations related to them..."³¹⁶.

However, the Tunisian legislator limited the exception and imposed obligations for disclosure. It stated that "the exceptions provided for in Article 24 of this law shall not apply:"

- Access to information necessary to uncover serious human rights violations, and war crimes, or to investigate or prosecute their perpetrators, unless it is detrimental to the higher interests of the state.

³¹⁶ Chapter (24) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

- Access may be granted if the public interest outweighs the harm that may be caused to the interest being protected, in cases where there is a serious threat to health, safety, the environment, or as a result of a criminal act"³¹⁷.

The Tunisian legislator did the right thing by requiring the publication of information that is subject to exceptions when it concerns revealing serious violations of human rights, war crimes, or investigating and prosecuting their perpetrators. The Tunisian legislator prioritized the public interest over exceptions, which is a matter of utmost importance that the Palestinian legislator should recognize when reviewing the draft access to information law. It is essential to ensure community participation in reviewing this draft and to guarantee its consistency with international standards. The law should be enacted and published in the official gazette without delay due to its utmost importance, especially in the Palestinian context.

However, the Tunisian legislator also granted the right to waive this rule if it affects the higher interests of the state. This statement can be used to justify the reversal of the right to access information due to its impact on the higher interests of the state, even if it involves serious violations of human rights.

With regard to the second paragraph of the aforementioned article, which states that public interest should prevail over the harm that may be caused when there is a serious threat to health, safety, or the environment, or due to the occurrence of a criminal act, it is a vague provision that carries sufficient flexibility to prevent its application. It has been emphasized that the use of "vague terms" in restrictions in this regard conflicts with international standards.

³¹⁷ Chapter (25) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

On the other hand, who will decide to prioritize the public interest over the private interest of maintaining the confidentiality of information? And who will determine the existence of serious violations of human rights or war crimes or a serious threat to health or safety?

The answer to this question lies with the state and its administration. If the state, through its institutions and administration, has refused to disclose information and justified its refusal by claiming that it falls within the exceptions, is it expected that the same authorities will disclose the information to justify their previous decision?

Finally, the Tunisian legislator has limited the exceptions provided for in Article 24 of the Access to Information Law and made them available to the public to access and obtain information within the deadlines and conditions set forth in the current legislation on archives³¹⁸.

The Archive Law also stipulates that "access to public archives shall not be granted until thirty years have elapsed from the date of their creation, except for the cases provided for in Articles 16 and 17 of this Law"³¹⁹.

In Lebanon, the exceptions to the right to access information are defined within the legislative context regulating the right to access information. The law states that "information that cannot be disclosed includes:

1- The administration refrains from disclosing the required information if it pertains to the following topics:

- a. National defense secrets, national security, and public security.
- b. The management of the state's foreign relations of a confidential nature.

³¹⁸ Chapter (28) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

³¹⁹ Chapter (15) of the Law No. 95 of 1988 concerning archives.

The confidentiality clauses included in contracts concluded by the administration do not prevent the right to access them while taking into account the provisions of Article 5 of the law.

2- Access is prohibited to the following documents:

- a. The records of investigations before they are read in an open session, secret trials, and trials related to events and personal status. The content of files, lawsuits, and judicial reviews is not available for access except according to the provisions of the relevant trial laws.
- b. The minutes of closed sessions of parliament or its committees, unless otherwise decided.
- c. The deliberations of the Council of Ministers are classified as confidential.
- d. Preparatory and administrative documents that are not completed.
- e. Opinions issued by the Shura Council, except by those concerned within the framework of a judicial review"³²⁰.

Analyzing some of the exceptions provided by the Lebanese legislator to avoid repetition, regarding the minutes of closed sessions of parliament or its committees, if the sessions of the parliament and its discussion of the general budget and legislation are public, it is unacceptable to include this exception for committees, and any justification for this is not valid. The same applies to the deliberations of the Council of Ministers.

In Morocco, exceptions to the right to access information are also mentioned. Accordingly, it states that "to protect the higher interests of the country, and in accordance with the provisions of paragraph two of Article 27 of the Constitution, and taking into account the deadlines specified in articles 16 and 17 of the Archive Law No. 69.99, all

³²⁰Article (4) of the Law No. 333 amending Law No. 28 of 10/2/2017 on the right to access information.

information related to national defense and internal and external state security is exempted from the right to access information... The provisions of the preceding paragraph apply to information whose disclosure would cause harm to the following:"

1. Relations with another state or governmental international organization.
2. Monetary, economic, or financial policies of the state.
3. Industrial property rights, copyright, or neighboring rights.
4. The rights and interests of victims, witnesses, and whistleblowers regarding crimes of bribery, embezzlement, abuse of power, and others covered by Law No. 37.10 amending and supplementing Law No. 22.01 concerning the Criminal Procedure Code.

Additionally, information that is classified as confidential under special legislative provisions currently in force is also exempted from the right to access information, as well as information whose disclosure would compromise the following:

1. Confidentiality of the deliberations of the Council of Ministers and the Cabinet.
2. Confidentiality of administrative investigations and inquiries unless authorized by competent judicial authorities.
3. Confidentiality of legal proceedings and preliminary procedures, unless authorized by the competent judicial authorities.
4. Principles of fair and legitimate competition, as well as private initiative"³²¹.

Regarding the exception provided for national defense and internal and external state security, some Moroccan jurists consider that the term "national defense" is a vague and

³²¹ Article (7) of Dahir No. 15-18-1 issued on 22/2/2018 implementing Law No. 13-31 on the right to access information.

imprecise concept in many legislations, which allows the state to use and exploit this term according to what serves the interests of the state primarily³²².

On the other hand, some jurists assert that by examining Article 7 of the regulatory law on the right to access information, it is found that the Moroccan legislator was exempted from the principle of disclosure of information related to national defense and internal and external state security. Citizens cannot access or obtain such information, and what is criticized about this is that the legislator did not define the term "secrecy of national defense and internal and external state security," nor did it specify the exact meaning of this secrecy. Instead, the door was left open for state institutions to determine the meaning of secrecy³²³.

Therefore, the researcher in this regard believes that the state itself, through its institutions and administration, has the competence to determine what falls under the state secrets related to national defense and internal and external state security. Therefore, the military institution should sacrifice outside the legal framework of the right to access information. In any case, it is necessary to adhere to the "three-part test" in any restriction on the freedom of information.

It should be noted that Moroccan criminal law has addressed the nature of national defense secrets within its punitive scope. Accordingly, it stipulates that the following are considered "national defense secrets under this law:

³²² Sakina El Boutahri, Iman Iskass, Othmane Sfiani, and Aamir Al-Habib: The right to access information and professional secrecy, Faculty of Legal, Economic and Social Sciences - Mohammed V University in Rabat, 2017/2018, Page 11.

³²³ Rachida Badq: The right to access information in Morocco: a reading of regulatory law number 31.13, Publications of Legal Notebooks Magazine - Administrative Notebooks series, 2018, Page 61.

1- Military, diplomatic, economic, or industrial information, the nature of which requires that only those responsible for safeguarding it have access to it and that the confidentiality of the information be preserved concerning any other person since it is necessary for national defense interests.

2- Objects, tools, documents, designs, maps, copies, photographs, or any other images and documents, the nature of which requires that only persons authorized to use or safeguard them have access to them, or that their confidentiality be preserved concerning any other person, that could lead to the disclosure of information of any of the types mentioned in the previous paragraph.

3- Military information, of any nature, that has not been published by the government and does not fall within the foregoing, which has been prohibited from being published, broadcast, disclosed, or photographed, either by decree or by a decision of the Council of Ministers.

4- Information related to the procedures taken to detect the perpetrators or participants in crimes or misdemeanors against external state security, to arrest them, or to the progress of investigations and discussions before the relevant court."³²⁴

Regarding the confidentiality of council committees, some schools of jurisprudence argue that the basis for such confidentiality is that the discussions held in these committees are not final and therefore cannot be made public until final decisions are reached, which are of interest to the public. The second consideration is the desire not to disclose the personal positions of committee members during discussions³²⁵.

³²⁴ Article (187) of The "Dahir" No. 1.59.413 issued on 26/11/1963 approving the Criminal Code, as amended and published in the Official Gazette No. 2640 of 5 June 1963.

³²⁵ Othman El Ziani: A study of the components of transparent parliament: towards consolidating the right to access parliamentary information, proceedings of the international conference: The Moroccan

Regarding exceptions according to Moroccan legislation, some schools of Moroccan jurisprudence conclude that "the exceptions provided for the public interest are requirements defined by the intentional limits set by the legislature and imposed as exceptions to the principle of disclosure and obtaining information. The Moroccan legislature must work seriously to precisely define these exceptions, to prevent expansion in those exceptions, and to specify them exhaustively. These exceptions should not include vague and comprehensive concepts that empty the right to obtain information of its content, because some concepts are used comprehensively and vaguely that could prevent obtaining information³²⁶.

(Article 19) Organization, based in the UK, commented on Moroccan legislation regarding exceptions to the right to obtain information, stating that "the exceptions to the right to obtain information have been formulated broadly and ambiguously and require greater scrutiny and detail. The exceptions provided for do not comply with international standards and do not fully guarantee consideration of the harm test and public interest requirements"³²⁷.

The exceptions provided for in Arab legislation are often shrouded in ambiguity and the flexibility of the terms used (vague terms) can turn exceptions into a rule, thereby preventing the right to access information. This conflicts with international agreements and standards.

Constitution 2011 - developments and prospects, Faculty of Legal, Economic and Social Sciences in Oujda and the Center for Human and Social Studies and Research in Oujda, 2012, Page 52.

³²⁶ See! Mr. Hamo Zerrah: The right to obtain information in international conventions and some constitutions of democratic countries and in Morocco, published on the electronic link: m.marocdroit.com , on 8/20/2022 at 21:15. Article19.org/ar/resou

³²⁷ <https://www.article19.org/ar/resou>

International agreements and conventions have stipulated exceptions to the right to access information. The International Covenant on Civil and Political Rights states that "the exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- 1- For respect of the rights or reputations of others;
- 2- For the protection of national security or of public order (ordre public), or of public health or morals.³²⁸"

As previously mentioned, reading the text in the International Covenant on Civil and Political Rights requires applying a "three-part test" to the restrictions or exceptions outlined in it and not dealing with them based on their flaws. Definitions for the terms used in international agreements cannot be universally applicable to all countries. Therefore, the importance of the three-part test referred to in this text comes into play. This is the test adopted in international standards regarding the controls or restrictions placed on rights and freedoms, including the right to access information.

In this regard, the European Convention on Human Rights also allows for the restriction of this right with exceptions and stipulates that "these freedoms come with duties and responsibilities, so they may be subject to formalities, conditions, restrictions or penalties as prescribed by law and necessary in a democratic society for national security, territorial integrity, the safety of the public, prevention of disorder or crime, protection of health or morals, protection of the rights and freedoms of others, preventing the disclosure of

³²⁸ Article (3/19) of the International Covenant on Civil and Political Rights, which was adopted and offered for signature, ratification and accession pursuant to United Nations General Assembly Resolution 2200 A (D-21) dated 12/16/1966 and entered into force on 3/23/1976 under Article (49) of the Covenant.

information received in confidence, or maintaining the authority and impartiality of the judiciary"³²⁹.

The American Convention on Human Rights also limits the right to access information and allows for it. Therefore, it stipulates that "the exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

Regarding the International Covenant on Civil and Political Rights, it states that the exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- 1- For respect of the rights or reputations of others;
- 2- For the protection of national security or of public order (ordre public), or of public health or morals..."³³⁰.

As for the Universal Declaration of Human Rights, it did not include any explicit restriction on the right to access information. It states that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"³³¹.

³²⁹ Article (10/2) of the European Convention on Human Rights - Convention for the Protection of Human Rights and Fundamental Freedoms within the Council of Europe, Rome 4/11/1950.

³³⁰ Article (13) of the American Convention on Human Rights, adopted on 22/11/1969.

³³¹ Article (19) of the Universal Declaration of Human Rights.

The texts in the European Convention on Human Rights and the American Convention on Human Rights are dealt with through the three-part test at the level of legislation and practical implementation in accordance with international standards.

In this context, a part of jurisprudence sees that the most distinctive feature of Article 19 of the Universal Declaration of Human Rights in addressing the right to access information is that it did not restrict the exercise of this right to any limitations, whether for the public interest or the preservation of privacy. However, what followed in the text, specifically Article 29(2) of the Universal Declaration, imposed a general restriction on all the rights mentioned in the declaration, including the right to access information, by subjecting the individual's exercise of their rights and freedoms, including the right to access information, to the limitations determined by the law³³². However, the application of the "three-part test" effectively contributes to the coherence of those restrictions with international standards.

In this regard, the researcher believes that the Universal Declaration of Human Rights, like other international conventions, has restricted the right to access information and allowed exceptions to that right. The subsequent restriction of the text is like the previous one, and there is no room to say that the Universal Declaration did not allow exceptions in light of Article 29(2) of it, which stated that "no one shall be subjected to any restrictions on the exercise of his rights and freedoms except those prescribed by law solely for the purpose of securing due recognition and respect for the rights and freedoms

³³² Nahla Abdulqader Al-Moumani: The right to access information in international human rights covenants - Sharia and Law Sciences, University of Jordan - Deanship of Scientific Research, Volume 46, Issue 2, 2019, Page 116.

of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

The crucial test is to pass the three stages of the three-part test successfully in each stage, knowing that this test is described as "rigorous" in order not to empty the right to access information and its content. Therefore, international committees in the United Nations that examine the extent of states' commitment to implementing these agreements, including the International Covenant on Civil and Political Rights, apply the three-part test to assess the conformity of the legislation, policies, and practices of states with this covenant, including the right to access information.

Similarly, UN special rapporteurs, including the Special Rapporteur on the right to freedom of opinion and expression and its powers, including the right to access information, apply the three-part test to any restriction in legislation, public policies, or practical practices on freedom of opinion, expression, and information to ensure their conformity with international human rights agreements and standards, and that the right is the norm.

Regarding judicial applications in this regard, specifically foreign ones, the US Court of Appeals, in the *Claude* case, ruled that the only legitimate restrictions on the freedom to trade information are those that conform to the restrictions on freedom of expression, while the precedents of the European Court have included a similar conclusion³³³. They deal strictly with the three-part test to determine the legitimacy of any restriction.

To summarize what has been mentioned, exceptions to the right to access information require the availability of three conditions (the three-part test). The first is

³³³ Michael Carr and Toby Mendel: *Establishing freedom of information: An analysis of constitutional protection of freedom of information*, March 2012, Page 7.

that the restriction must be specified by the law in a clear, precise, and non-vague manner, and it must be consistent with international standards.

The second condition is that the intended purpose of the restriction must be necessary and legitimate to protect a worthy interest, not to be a cover-up for corruption and that the exception is necessary, and there is no other way to achieve the intended purpose of protecting the higher interest except by imposing the exception. The third condition is the proportionality between this restriction and the interest intended to be protected, to avoid emptying the right of its content. It is necessary to pass each stage of the three stages successfully to determine the legitimacy of any restriction.

It should be noted that Palestine joined the International Covenant on Civil and Political Rights without reservations in early April 2014, which protects the freedom of opinion and expression and its broad sphere, including the right to access information in Article 19 of the Covenant. Taking into account General Comment No. 34 issued by the UN Human Rights Committee, Palestine is required to enact a law on the right to access information without delay and ensure that any restriction in legislation is fully consistent with the three-part test. This test revolves around three main issues or levels, namely:

- The first level: Legality, where any restriction must be based on a clear, explicit, and specific legal text, and not use vague terminology.
- The second level: Necessity, where there is a legal text that protects the right, and there is a related right, which is privacy, and the importance of achieving balance.
- The third level: Proportionality, where the restriction is proportionate to the right, and the aim is not to empty the right of its content.

After discussing the exceptions to the right to access information according to the Palestinian Right to Information draft law, Arab legislation, international conventions,

and the conditions that must be met for exceptions, we move on to the second issue, which discusses the exceptions allowed for private interests.

Subsection Two: Exceptions Allowed for Private Interests

We have previously indicated that the right to access information is one of the constitutional rights that comparative Arab legislations strive to enshrine and legislate in accordance with international human rights law (the Universal Declaration of Human Rights and the two International Covenants, particularly the International Covenant on Civil and Political Rights). This is done by constitutionally affirming this right and issuing regulations to organize it. The importance of international standards governing any restriction on this right has also been emphasized.

As each rule has exceptions, the same applies to the right to access information, which has explicitly and implicitly stated some exceptions that prevent the disclosure of certain information. This is not limited to national legislation, as international conventions have also provided exceptions to this right. These exceptions involve the refusal of a state to disclose certain information that involves privacy or aims to maintain stability, provided that these restrictions are clear and specific in domestic laws in order to prevent the expansion of the concept of prohibition and abuse by public authorities³³⁴.

In this regard, the right to access information may conflict with the right to privacy and the sensitive information it contains. Therefore, regulations governing the right to access information have taken into account the sanctity of private life in the process of balancing rights in case of conflict.

³³⁴ Akou Ali: The Right to Access Information: A Study in Light of Law 31.13, Business Disputes Magazine, Issue (53), 2020, Page 205.

Some aspects of jurisprudence have recognized the right to private life as "the scope in which a person can withdraw or isolate themselves from others to achieve a type of tranquility and maintain the confidentiality of private life"³³⁵.

Another aspect of jurisprudence sees private life as the hidden side of a person's life, which the owner strives to keep private and not disclose to others, retaining it for themselves. Among the issues that fall within the scope of private life, for example, are those related to family life, such as parenthood, marriage, polygamy, separation, emotional life, whether it involves relationships of love or hate, personal image, financial obligations, whether decreased or increased and taxes paid to the state, as well as how a person spends their leisure time³³⁶.

The right to respect private life and the non-interference with it is considered one of the most fundamental rights closely linked to human beings, which they acquire simply by being human. It guarantees a person the right to live freely and safely in society and is a foundation for protecting their dignity and independence from others. Although the roots of this right go back to ancient times, it is still subject to many disputes and jurisprudential discussions regarding its definition and boundaries, as is the case with many of the terms related to human rights and freedoms³³⁷.

The right to respect individuals' private life has been subject to numerous violations due to technological advancements that allow easy access to such information through various sources, all without just cause and in violation of the law. There is currently no Palestinian

³³⁵ Mamdouh Khalil Bahr: Protection of privacy in criminal law - a comparative study, Dar Al-Thaqafa Library, 1996, Page 206.

³³⁶ Reda Hamissi: Guaranteeing the right of access to information in light of Moroccan constitutions, Journal of Legal and Political Sciences, Issue (14), 2016, Page 249.

³³⁷ See, Maimoon Khaira: The legal framework for the right to private life within the scope of international law, published on the electronic link: <https://www.asjp.cerist.dz>

law that protects the right to privacy. This fundamental human right requires legislative protection, similar to the legislative protection required for information.

Financial information, educational information, and other personal information should not be disclosed as long as the person being addressed has no legitimate interest in it and as long as the person whose information is being requested does not hold a public position and the information is not related to the nature of their work and its cause.

The right to privacy is a fundamental human right, and the right to access information is a fundamental human right as well. Rights cannot be separated, and applying the "three-part test" effectively contributes to protecting rights in case of conflict. The "second level" of the test requires that the restriction be necessary and serve a legitimate and urgent interest. This means that restricting the right to access information serves the right to privacy, as required by the three-part test, to protect the enjoyment of these rights in case of conflict.

In this regard, international treaties have recognized the right to life, privacy, and the prevention of encroachment upon them. The Universal Declaration of Human Rights has stated the following: "Everyone has the right to the protection of the law against such interference or attacks." It also prohibits subjecting individuals to arbitrary interference in their private life, family, home, or correspondence and guarantees everyone the right to legal protection against such encroachments³³⁸ or attacks on their honor and reputation³³⁹.

³³⁸ Article (6) of the Universal Declaration of Human Rights.

³³⁹ Article (12) It is prohibited to subject the individual to arbitrary interference in his private life, family, residence or correspondence, and every person has the right to the protection of the law against such encroachments.

The International Covenant on Civil and Political Rights also recognizes the right to private life and its inviolability, stating that "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor unlawful attacks on his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks"³⁴⁰.

The Human Rights Committee's General Comment No. 16 on Article 17 of the International Covenant on Civil and Political Rights clarifies the concept of unlawful and arbitrary interference, stating that the term "unlawful" means that no interference should occur except in cases provided for by law.

Interference authorized by states must not occur except based on the law, which must itself be by the provisions, purposes, and objectives of the Covenant. The phrase "arbitrary interference" is also closely related to the protection of the right provided for in Article 17. The Committee considers that the phrase "unlawful interference" may also extend to interference provided for by law. The inclusion of the concept of arbitrariness is intended to ensure that the interference authorized by law itself is consistent with the provisions, purposes, and objectives of the Covenant and is in all cases reasonable about the specific circumstances in which it occurs.

In the European context, the European Convention has provided for the right to respect for private and family life, home, and correspondence. It stipulates that "Everyone has the right to respect for his private and family life, his home and his

³⁴⁰ Article (17) of the International Covenant on Civil and Political Rights, which was adopted and offered for signature, ratification and accession pursuant to United Nations General Assembly Resolution 2200 A (D-21) dated 12/16/1966 and entered into force on 3/23/1976 under Article 49) of the covenant.

correspondence"³⁴¹. This corresponds to Article 17 of the International Covenant on Civil and Political Rights regarding the right to privacy.

As mentioned above, international law that regulates the right to access information and enshrines it within its legislative framework also seeks to establish the right to private life and its inviolability and the prohibition of encroachment upon it through secondary provisions. This is because the system of human rights is universal, interconnected, and indivisible.

On the constitutional level, about the right to private life and its inviolability, and in relation to the Palestinian legislature, the Palestinian Basic Law stipulates that "human rights and fundamental freedoms are binding and must be respected"³⁴². It also states that "any assault on personal liberties or the inviolability of private life, as well as other public rights and freedoms guaranteed by the Basic Law, constitutes a crime that does not lapse the criminal or civil claim arising from it, and the national authority guarantees fair compensation to those who have suffered harm"³⁴³.

This means that violating the right to private life constitutes a "constitutional crime" that requires accountability and compensation under the mentioned constitutional provision, similar to the right to access information related to freedom of opinion and expression under the Palestinian Constitution. The constitutional text is clear that violating the public rights and freedoms guaranteed by the Basic Law constitutes a crime that requires accountability and compensation. However, the problem remains in the "absence of laws" regulating the right to privacy and the right to access information, which should clarify

³⁴¹ Article (8) of The European Convention on Human Rights - Convention for the Protection of Human Rights and Fundamental Freedoms within the Council of Europe, Rome 4/11/1950.

³⁴² Article (10/1) of The Palestinian Basic Law was amended in 2005.

³⁴³ Article (32) of The Palestinian Basic Law was amended in 2005.

the legal adaptation of these crimes and the mechanisms of supervision and accountability to ensure the effectiveness of implementing this constitutional provision and not obstructing it. This emphasizes the importance of accelerating the discussion and approval of such legislation that falls within Palestine's obligations under international agreements and disseminating and implementing them locally.

Regarding the Egyptian constitutional legislator, the right to private life is protected and enshrined in the constitution, which states that "private life is inviolable, and it is protected and not to be infringed upon. Postal, telegraphic, electronic, and telephone correspondence and other means of communication are protected, and their secrecy is guaranteed. They cannot be confiscated or accessed without a judicial order, for a specific period, and in the cases determined by the law. The state is committed to protecting citizens' right to use public communication means in all its forms. It is not permissible to obstruct, stop, or arbitrarily deprive citizens of them, and the law regulates that"³⁴⁴.

Likewise, the Lebanese legislator also guarantees personal freedom and its inviolability, as stated in the Lebanese Constitution, which provides that "personal freedom is safeguarded and protected by the law. No one may be arrested, detained, or imprisoned except in accordance with the provisions of the law. No crime or penalty can be established except by virtue of the law"³⁴⁵.

In the Moroccan context, the Moroccan Constitution has adopted the same right, and therefore, it states that "everyone has the right to protect their private life. The privacy of the home is inviolable, and no search can be conducted except under the conditions

³⁴⁴ Article (57) of The Egyptian Constitution was amended in 2019.

³⁴⁵ Article (8) of The Lebanese Constitution of 1926 and its amendments.

and procedures specified by law. Personal communications, of whatever nature, cannot be infringed upon, and their confidentiality is guaranteed. Their content cannot be accessed or disclosed, in whole or in part, or used against anyone, except by a judicial order and in accordance with the conditions and procedures specified by law"³⁴⁶.

The Tunisian legislator also guarantees the right to private life and its inviolability, as enshrined in the constitution, which states that "the state protects private life, the inviolability of the home, the confidentiality of correspondence, communications, and personal data"³⁴⁷.

Likewise, the Jordanian constitutional legislator has enshrined the right to private life and its inviolability, stating that:"

1-personal freedom is safeguarded,

2-any infringement of public rights and freedoms or the private life of Jordanians is a crime punishable by law"³⁴⁸.

The Yemeni legislator has also adopted the same approach by enshrining the right to respect for private life in the constitution, which states that "the state guarantees the personal freedom of citizens, preserves their dignity and security, and the law determines the cases in which citizens' freedom may be restricted. The freedom of any individual shall not be restricted except by judicial order"³⁴⁹.

As we have seen, the constitutional legislator in Arab countries has generally sought to establish the right to access information as a fundamental right that individuals must enjoy

³⁴⁶ Article (24) of The Moroccan Constitution was issued in 2011.

³⁴⁷ Chapter (24) of The Tunisian Constitution of 2014.

³⁴⁸ Article (7) of The Jordanian Constitution of 1952.

³⁴⁹ Article (48) of The Yemeni constitution.

to exercise their political, economic, and social rights without interference in their private lives.

Regarding criminal legislation in Palestine, the Criminal Code addresses various forms of infringement on the right to private life and criminalizes them. The Criminal Code provides that:"

1- Anyone employed by the postal or telegraph service who abuses their position by opening an envelope or destroying or stealing a letter or disclosing its contents to someone other than the intended recipient shall be punished with imprisonment for a period of one month to one year.

2- Anyone employed by the telephone service who discloses a telephone conversation they have listened to by virtue of their job or work shall be punished with imprisonment for a period of six months or a fine of up to twenty dinars"³⁵⁰.

In Yemeni criminal legislation, it is stated that "anyone who opens a letter sent to another person without authorization, detains a telegram or telephone message, or steals or destroys one of these messages, or discloses its contents to someone other than the intended recipient, shall be punished with imprisonment for a period not exceeding one year or a fine. If the message was inadvertently sent open or by mistake, the same penalty applies. If the crime is committed by a public official in breach of their duties, the penalty is imprisonment for a period not exceeding two years or a fine"³⁵¹.

In Tunisian criminal legislation, it is stated that "anyone who uses an information network, electronic information system, or any information technology means to infringe on a person's privacy in any way not permitted by law, shall be punished with

³⁵⁰ Article (256) of the Jordanian Penal Code No. 16 of 1960.

³⁵¹ Article (255) of the Presidential Decree-Law No. 12 of 1994 on crimes and punishments.

imprisonment for a period not less than six months and a fine not less than 1500 Tunisian dinars and not exceeding 500,000 Tunisian dinars or one of these two penalties."

1- Eavesdropping, interception, recording, transmitting, broadcasting, or disclosing conversations, communications, audio, or visual materials.

2- Taking pictures of others or creating electronic images, whether by transferring, disclosing, copying, or retaining them.

3- Publishing news, electronic images, photographs, scenes, comments, data, or information, even if they are true and accurate.

Furthermore, anyone who uses an electronic information system or any information technology means to modify, process, record, photograph, or capture with the intention of defaming, harming, violating the privacy of another person, or infringing upon it, shall be punished with imprisonment for a period not less than one year and a fine not less than 250,000 dirhams and not exceeding 500,000 dirhams or one of these two penalties.³⁵²

In Moroccan legislation, it is stated that "any public official, court employee, or postal service or its agents who opens, steals, or wastes mail entrusted to the postal service, or facilitates its opening, theft, or waste, shall be punished with imprisonment for a period of three months to five years and a fine of 100 to 1,000 dirhams. The same penalty applies to any user or agent of the telegraph service who steals or wastes a telegram or broadcasts its content.

The offender is also prohibited from holding any public office or public service for a period not less than five years and not exceeding ten years.³⁵³

³⁵² Article (21) of the -Law No. 5 of 2012 on combating information technology crimes in Tunisia, published in the Official Gazette No. 540 of the forty-second year - Supplement, dated 26/8/2012.

³⁵³ Article (232) of the The Moroccan Penal Code.

The right to respect private life and the confidentiality of personal information is considered an exception to the right to access information.

In Palestinian legislation, it is stated that "the concerned employee must refuse to disclose any information related to a third party's private life except in the following cases:

- 1- If the person with the relationship agrees to this disclosure.
- 2- If this information is publicly available.
- 3- If this disclosure is requested under a judicial order or with the consent of the general commissioner.
- 4- If the requester is the legal guardian of the third party.
- 5- If the requester is a relative of the deceased and makes the request at least twenty years after their death"³⁵⁴.

The researcher in this regard criticizes the aforementioned text, stating that the legislator has linked the consent to publish information with the consent of the person with the relationship, without any distinction between the nature of that information and the role and function entrusted to that person. The legislator did not differentiate between requesting information from a person who held a position in the state and another who did not hold any position and placed them on the same level. This is a criticism directed towards the Palestinian legislator.

In addition, the Palestinian legislator did not address cases where the request is made by non-relatives of the person providing the information or the related party in the event of their death and did not clarify the legal status of such cases, whether by referring to the right to consent to the heirs or assigning it to the general commissioner of information.

³⁵⁴ Article (28) of the The draft law on the right to access information.

The Palestinian project has set twenty years for the requester who is a relative of the person providing the information in the event of their death, which is a long period that contradicts the purpose of the access to information law. On the other hand, what is the point of leaving the information out of the relevant institutions' records if the person related to that information has passed away?

The Palestinian legislator used the term "from the non-relative's relatives," which is a term not commonly used in legislation. The norm is for legislation to specify the degree of kinship regardless of the relationship between the spouses or towards each family.

The Palestinian project also aimed to protect individuals' personal information and trade secrets. Accordingly, it stipulated that "the responsible employee must refuse to disclose any information containing professional secrets of a third party or if its disclosure would weaken the competitive position of a third party unless the third party agrees to disclose it"³⁵⁵.

The researcher wonders who is responsible for determining what is considered a secret and what is not, and who is qualified to determine the potential harm that may be caused to the third party if the information is disclosed with their permission.

The answer to this question, in light of the provisions of the Access to Information project, is ambiguous and it is not possible to determine the competent authority. According to the general rules of the text, the requester has the right to challenge the decision of that employee to the competent authorities, as discussed within the guarantees of the right to access information. It should not be overlooked that the "first-level" of the three-part examination requires the text that restricts the right to be clear and specific and that no ambiguous terms are used.

³⁵⁵ Article (24) of the draft law on the right to access information.

In Yemen, personal data was also excluded from the scope of the right to access information. Accordingly, it stipulated that "with regard to the provisions of Articles (4, 19, 20/b, 23) of the law, the responsible employee must refuse any request for information if it contains:"

1- Information that, if disclosed, is expected to endanger the life or physical safety of an individual.

2- Personal data that, if disclosed, would constitute an unreasonable violation of the individual's privacy, unless the personal data is connected to a duty, job, or public position held by that individual"³⁵⁶.

The researcher believes that the Yemeni legislator was right to exclude information related to individuals from the scope of exceptions regarding the disclosure of information. It is logical and reasonable that if a person holds a public job, there is no room for exceptions as long as the requested information is related to their job.

In this regard, providing financial information about individuals who have held public positions, for example, would contribute to positive and constructive citizen engagement in financing the public budget, combating corruption and tax evasion, combating financial corruption, and instilling confidence and trust in the state's financial system³⁵⁷.

Furthermore, what prevents disclosing information related to an individual's private life if there are violations of the law attributed to that person and if the public interest is better served by upholding the principle of the rule of law rather than preserving the confidentiality of the information?

³⁵⁶ Article (25) of the Law No. 13 of 2012 on the right to access information.

³⁵⁷ Ahmed Mafid: The Right to Access Information and Participation in Public Life, Moroccan Journal of Local Administration and Development, Issue (114), 2014, Page 21.

The Yemeni legislator has limited the exception regarding the sanctity of individuals to a specific time frame. Accordingly, it stipulated that "the responsible employee may not refuse to disclose the information listed in Article (25) of this law if:"

- 1- This information is still in the possession of the entity and dates back more than thirty years.
- 2- This information was previously available to the public"³⁵⁸.

Thus, it is evident that the Yemeni legislator has made information related to the passage of time, as stated above, subject to disclosure without any distinction in the type of information, its level of confidentiality, or its connection to individuals, provided it is in the possession of official authorities.

In Tunisia, the law grants the right to access information only when it does not infringe on the rights of others to protect their private life, personal data, or intellectual property. The law stipulates that "the relevant structure cannot refuse access to information unless it leads to causing harm to the rights of others in protecting their private life, personal data, or intellectual property"³⁵⁹.

Similarly, the Jordanian legislator adopted the same restriction and stated that "while taking into account the provisions of the current legislation, the responsible person must refrain from disclosing information related to the following: ... personal information and files related to educational, medical, employment records, accounts, bank transfers, or professional secrets"³⁶⁰. This reaffirms the importance and necessity of enacting a specific law to protect the right to privacy.

³⁵⁸ Article (26) of the Law No. 13 of 2012 on the right to access information.

³⁵⁹ Chapter (24) of the Basic Law No. 22 of 2016 relating to the right of access to information in Tunisia.

³⁶⁰ Article (13) of the Law No. 47 of 2007 on ensuring the right to access information, published on 17/6/2007.

In this regard, some scholars of Islamic jurisprudence argue that the Jordanian legislator, through these exceptions, somewhat agrees with international standards regarding the legitimate purpose of protecting personal information and files related to individuals, whether medical or educational, which is the right to respect the privacy of individuals concerning their medical matters³⁶¹.

However, the researcher sees otherwise in some aspects. Information related to education should not be subject to protection if the person whose educational information is being requested is a candidate for a job that requires a specific academic qualification or a specific grade. In such a case, there is no room for applying this exception; otherwise, the exception would become a basis for job corruption and the principle of equal opportunities, which are constitutional principles guaranteed in the Palestinian Basic Law.

One of the types of information that are subject to exceptions from the principle of disclosure and access to information is information related to investigations conducted by the public prosecutor³⁶² for the purpose of preserving evidence of the crime and preventing anyone from taking any action that may affect the course of the investigation. The legislator also aims to respect the privacy of the parties to the criminal case, including the certificates and technical reports included in the case file.

Accordingly, the Palestinian Criminal Procedure Law stipulates that "investigation procedures or the results derived from secrets that cannot be disclosed shall be considered a crime punishable by law". The secrecy of the investigations conducted by the Public

³⁶¹ Nahla Abdulqader Al-Moumani: The right to access information in the Jordanian legal system and regional and international human rights standards, Dar Al-Monzuma, 2015, Page 109.

³⁶² Article (59) of the Palestinian Criminal Procedure Law No. 3 of 2001.

Prosecutor's Office ends with the referral of the criminal case to the competent court. The trial proceedings then become public, unless the court decides otherwise and continues to hear the case in secret. The existing legislation states that "the court shall hold a public session unless it decides to hold a closed session to preserve public order or morality. In all cases where a criminal case is subject to secrecy, regardless of the reason for such secrecy, the judgment issued in that case must be made publicly³⁶³. The Palestinian legislation further states that "the judgment shall be issued in a public session, even if the case was heard in a closed session"³⁶⁴. In this regard, some aspects of legal jurisprudence hold that the principle of publicity should prevail during the trial stage of the judicial proceedings to ensure public trust among the litigants. The principle of trial publicity means providing the right for the public, including the media, to attend trial sessions, regardless of their level of interest or connection to the case, whether it concerns matters of corruption or otherwise³⁶⁵.

It should be noted that in no case is it permissible to publish information related to the trial that would have an impact on the judge or witnesses, under penalty of criminal prosecution and punishment. The existing Penal Code stipulates that "anyone who publishes news, information, or criticisms that could affect judges or witnesses or prevent anyone from providing information to the authorities shall be punished with imprisonment for a period not exceeding three months or a fine not exceeding fifty dinars"³⁶⁶.

³⁶³ Article (273/3) of the Palestinian Criminal Procedure Law No. 3 of 2001.

³⁶⁴ Article (273/3) of the Palestinian Criminal Procedure Law No. 3 of 2001.

³⁶⁵ Asaidani Salami: The Legal Dimension of Freedom of Information Exchange in the Kingdom of Saudi Arabia - A Descriptive Perspective from an Media Viewpoint, *Maton Journal*, Volume (11), Issue (3), 2020, Page 196.

³⁶⁶ Article (224) of the Jordanian Penal Code No. 16 of 1960.

In this regard, the researcher believes that existing legislation must be amended to align with the desired goal of accessing information. The aforementioned provisions and others we have previously discussed constitute a barrier to accessing information and subject those who seek to obtain and publish information to the threat of criminal prosecution and punishment, which contradicts international treaties and legislation concerning the right to access and publish information. The Penal Code also criminalizes the publication of documents related to investigations until they are read in a public session, while the scope of criminalization remains in effect for cases where the court decides to hold a secret trial. Accordingly, the law states that "anyone who publishes shall be punished with a fine ranging from five dinars to twenty-five dinars."

1- A document from criminal or misdemeanor investigation documents before being read in a public session.

2- Trials held in secret sessions.

3- Trials related to defamation cases.

4- Any trial that the court has prohibited from being published"³⁶⁷.

However, the Palestinian legislature has prohibited the publication of court transcripts as original documents unless the court decides otherwise. The law states that "the publication of court transcripts in any case pending before the court is prohibited until a final verdict is issued, and in any case involving a citizen under the age of 16 unless the court approves their publication." This provision conflicts with the "publicity of trial sessions"³⁶⁸ guaranteed by the Palestinian Constitution.

³⁶⁷ Article (225) of the Jordanian Penal Code No. 16 of 1960.

³⁶⁸ Article (39) of the Law No. 9 of 1995 on printing and publishing.

In Jordan, the constitution affirms the principle of open trials as a fundamental principle. Accordingly, it states that "court sessions are public unless the court decides otherwise to protect public order or morals"³⁶⁹.

The Jordanian legislature has granted the press and media the right to publish court sessions and proceedings unless the court decides otherwise to protect individual rights, families, public order, or public morals. The law states that "the press has the right to publish court transcripts and cover court sessions unless the court decides otherwise to protect individual rights, families, public order, or public morals. In all cases, the verdict must be pronounced publicly"³⁷⁰. As previously stated, the vague terms in legislation conflict with international standards.

The Jordanian Code of Criminal Procedure stipulates that the default principle for trials is openness unless the court decides otherwise to protect public order, and public morals, or if the case pertains to personal matters. The law states that "Trials are conducted publicly unless the court decides to conduct them in secret to protect public order or public morals or if the case pertains to personal matters. In all cases, the court may prohibit certain groups of people from attending the trial"³⁷¹.

This general principle of openness in trials has an exception in cases related to events, where the Palestinian legislature made secrecy the default principle for all cases related to events. The law states that "Trials related to events are considered secret unless the court decides otherwise:"

³⁶⁹ Article (101/2) of the The Jordanian Constitution of 1952.

³⁷⁰ Article (39/b) of the Law No. 9 of 1995 on printing and publishing.

³⁷¹ Article (213/2) of the Jordanian Code of Criminal Procedure No. 9 of 1961.

1- Files related to events are considered confidential and prohibited from being published or accessed by anyone other than the event's lawyer, guardian, or child protection guide without special permission from the court or even prosecution if the file is under investigation.

2- It is prohibited to publish the name, image, or any information that identifies the event, as well as publish the investigation or trial proceedings or a summary of them in any form of publication. The court may allow the publication of the final verdict, provided that only the first letters of the event's name, nickname, or title are mentioned"³⁷².

The Palestinian legislator has imposed a misdemeanor penalty on anyone who discloses information related to events. Accordingly, it was stipulated that "anyone who obtains or attempts to obtain information about the private life of the event, whether by publishing or promoting summaries of sessions and decisions issued by judicial bodies or news related to the proceedings of events, whether through books, press, radio, television, cinema or any other means, or by publishing or promoting images that may reveal the identity of the accused or the victim child, shall be punished with imprisonment for a period not exceeding one year and a fine not exceeding one thousand Jordanian dinars or one of these two penalties, and any printed or artistic materials that violate this shall be confiscated"³⁷³.

The Palestinian legislator has also banned the publication of information through articles or news that includes defamation of individuals in their dignity or personal freedom in the Printing and Publishing Law. Accordingly, it was stipulated that "the following may

³⁷² Article (9) of the Decree-Law on the Protection of Juveniles No. (4) of 2016.

³⁷³ Article (59) of the Decree-Law on the Protection of Juveniles No. (4) of 2016.

not be published in print: ... articles or news that would harm the dignity of individuals or their freedoms or damage their reputation"³⁷⁴.

In terms of Algeria's constitutional law, information related to the privacy of individuals is exempt from publication. Accordingly, it was stipulated that "obtaining information, documents, statistics, and conveying them to citizens cannot affect the exercise of this right concerning the private lives of others, their rights, or the legitimate interests of institutions..."³⁷⁵.

Like other Arab legislations, Algerian legislation prohibits the publication of individuals' private information without addressing the reality and purpose of the required information and whether the person whose private information is required holds a public position or because of their occupation of that position.

On the Moroccan level, it has also adopted the principle of exception for accessing information to preserve the privacy of individuals, and accordingly, it was stipulated that "...exceptions to the right to access information include those related to the private life of individuals or those that are personal data..."

The provisions of the above paragraph apply to information whose disclosure would cause harm to the following: "...4- the rights and interests of victims, witnesses, experts, and informants regarding crimes of bribery, embezzlement, abuse of power, and others..."³⁷⁶

Thus, it is evident that the Moroccan legislator has provided an exception to accessing information for those related to private life and has provided the same exception for

³⁷⁴ Article (6/37) of Law No. (9) of 1995 regarding press and publishing.

³⁷⁵ Article (51) of the amended Algerian constitution of 2016.

³⁷⁶ Article (7) Royal Decree No. 1-18-15 issued on 22/2/2018 implementing Law No. 13-31 related to the right to obtain information.

information related to individuals who report crimes related to public employment and by employees.

Regarding the exceptions provided for whistleblowers of public sector crimes, it is considered a legal and practical guarantee to combat corruption in official circles and an incentive for individuals to report corruption crimes.

As for the Palestinian legislator, the draft law on the right to access information did not provide for the protection of whistleblowers as stated in the Moroccan legislation. However, it concluded that no punishment shall be imposed on any employee who discloses information about violations or offenses committed against the law.³⁷⁷

With the establishment of anti-corruption laws, efforts have been made to provide legal protection for whistleblowers. Thus, it was stipulated that "the Authority shall ensure the legal, functional, and personal protection of witnesses, experts, and whistleblowers of corruption crimes, and determine the procedures for their protection and the special measures for that, according to a system prepared by the Authority and issued by the Council of Ministers"³⁷⁸.

The Anti-Corruption Law sought to address the deficiency in the draft law on the right to access information regarding whistleblowers and provide them with legal, functional, and personal protection. Accordingly, it was stipulated that "the Authority shall provide the necessary legal, functional, and personal protection for whistleblowers, witnesses, experts, their relatives, and persons closely related to them in corruption lawsuits against any potential attack, retaliation, or intimidation..."³⁷⁹

³⁷⁷ Article (10) of the Palestinian Right to Access Information Draft Law.

³⁷⁸ Article (18) of the amended Anti-Corruption Law No. (1) of 2005.

³⁷⁹ Article (16) of Decree-Law No. (37) of 2018 amending Anti-Corruption Law No. (1) of 2005.

It is worth noting that the measures taken by the Anti-Corruption Authority in protecting whistleblowers in the practical reality of the State of Palestine have failed to provide legal and functional protection for those who report corruption crimes. On the contrary, it has become a nightmare that threatens their lives.³⁸⁰

The exceptions provided for the right to access information are among the most controversial issues in most laws regulating the right to access information. It is expected that some information that is harmful to the legitimate individual or public interests may be blocked from disclosure. On the other hand, expanding and exaggerating exceptions, especially interpreting them expansively to become a rule, can empty the right to access information of its content and role. Therefore, a balance must be struck to protect the public interest without harming legitimate private interests³⁸¹. The "three-part test" must be fully adhered to in determining the legitimacy of any exception.

³⁸⁰ In this regard, we refer to the case of the two employees, Marwa Farah and Doaa Al-Masry in the Constitutional Court, who filed a complaint of suspicion of corruption in the Constitutional Court and did not receive the protection decision granted to them by the Anti-Corruption Commission. Those who suspected him of corruption did not stop at that point, but the two female employees were referred to the Public Prosecution with a complaint from the accused of corruption, and they reported him under four criminal charges, namely:

- 1- Slander contrary to Article 210 of the Penal Code.
- 2- Taking and removing archives and documents in violation of Article 204 of the Penal Code.
- 3- Defamation by publishing via information technology means, contrary to Article 45 of the Cybercrime Law Decree, in accordance with Articles 189 and 358 of the Penal Code.
- 4- Disclosing confidential information in cases other than those stipulated by unlawfully accessing a website in violation of Article 4 of the Cybercrime Law Decree.

Fatima Meshala: Harassment of whistleblowers of corruption in Palestine... Turning the complainant into an accused, published on the electronic link:

www.alaraby.co.uk

Visit on 8/31/2022, at 6:00 pm.

³⁸¹ See, Sakina Al-Boutahri, Iman Isqas, Othman Sufyani, and Amyar Al-Habib: The right to obtain information and professional secrecy, page 22.

Therefore, it is imperative to subject the exceptions related to private life to two conditions:

1- The exception must be justifiable, meaning it must relate to the privacy of an individual's personal life who is not a public employee and has no connection to public employment. Therefore, a public employee cannot object to the confidentiality of their financial information if the request for financial information is based on suspicion of that employee receiving a financial bribe. On the other hand, the financial information of a person who is not a public employee cannot be known to anyone as long as they have no connection to any government position or job.

2- Proof of the harm that may result from the disclosure of information is required. Therefore, legal legitimacy must balance between maintaining the confidentiality of individuals' private information and the public interest by disclosing private information if its disclosure leads to public benefit. The public interest must take precedence over individual interests.

Section Three: the Utmost Importance of the Right to Access Information in the Palestinian Context Specifically.

It is essential to address the utmost importance of the right to access information in the Palestinian case, for the following reasons:

1- The enactment of the right to access information law contributes to combating the occupation, which always seeks to spread rumors and fake news and dismantle the social fabric³⁸².

³⁸² It was mentioned in interviews with representatives of civil society organizations, including:

2- The enactment of the right-to-access information law contributes to enhancing popular oversight due to the absence of the legislative council, which is supposed to exercise its role in legislation and oversight³⁸³.

3- Disasters underscore the importance of having a right to access information law, as it is crucial for strengthening and supporting mechanisms for dealing with pandemics and disasters (such as the COVID-19 pandemic)³⁸⁴.

4- The division (Split administration of the West Bank and the Gaza Strip) imposes the importance³⁸⁵, necessity, and priority of having a right to access information law, as it is important for bringing viewpoints closer together, making things clear to everyone, and ultimately forming an official and popular pressure tool to end the division.

5- Finally, the right to access information law will contribute to achieving civil security and peace by ensuring the flow of accurate information³⁸⁶, away from rumors and inciting tensions, and by promoting transparency and clarity in policies, procedures, and all matters related to public life.

Perhaps what confirms the necessity of enacting the right to access information law is the interviews conducted by the researcher with the Prime Minister, the head of the Anti-Corruption Authority, and some representatives of civil society institutions. The

(1) Executive Director of the Coalition for Integrity and Accountability (AMAN) Mr. Essam Hajj Hussein, on June 20, 2023.

(2) Director General of the Human Rights and Democracy Media Center (Shams), Dr. Omar Rahhal, on June 19, 2023.

³⁸³ Interview with the Executive Director of the Coalition for Integrity and Accountability (AMAN) Essam Hajj Hussein, on June 20, 2023.

³⁸⁴ Interview with the Prime Minister, Dr. Mohammad Shtayyeh, on June 12, 2023.

³⁸⁵ Interview with the Executive Director of (AMAN), previously mentioned.

³⁸⁶ Director General of (Shams), previously mentioned.

government emphasizes the importance of the right to access information law and that it is among its priorities and policies, and it is striving to entrench it in reality. This is also confirmed by the head of the Anti-Corruption Commission, specifically in terms of the importance of the right to access information law in enhancing efforts to prevent corruption, and supporting transparency requirements, which necessarily leads to reducing the scourge of corruption³⁸⁷. In addition, the previous vision is consistent with the vision of civil society, specifically in terms of the need to accelerate the enactment of the right to access information law, due to its great importance at all levels.

Conclusion

The study's most important results and conclusions are presented below:

- 1- The legal framework in Palestine lacks, as of the date of this study, a specific law on the right to access information, as the draft access to information law is still pending approval by the competent authorities. Therefore, we recommend immediate action to issue an access to information law.
- 2- The exceptions to the right to access information, in light of the broad and comprehensive terminology used, conflict with international standards. Therefore, the researcher recommends working on accurately defining the exceptions, under the conditions of necessity and proportionality, to achieve the desired goal.
- 3- The set deadlines for obtaining information do not correspond to the desired goal of the right to access information in the digital age. Therefore, the researcher recommends

³⁸⁷Interview with the commissioner of the Anti-Corruption Commission, Dr. Raed Radwan, on June 7, 2023.

shortening those periods to the maximum extent possible to ensure timely access to information.

4- Most legislations do not differentiate between regular and urgent requests for information. Therefore, the researcher recommends considering this aspect regarding the Palestinian legislator.

5- The exceptions provided for in the right to access information law, respecting the privacy of individuals, is a sacred matter. However, this does not mean expanding this privacy, and therefore the researcher recommends limiting the sanctity of the private life of non-employees regarding information related to public functions.

6- Pre-publication of information is a guarantee of the right to access information, provided that it is published in media channels followed by the largest possible number of individuals. Therefore, the researcher recommends enshrining this in the Palestinian legislature, including social media.

7- The Palestinian draft law does not regulate appeals against decisions of the Information Commissioner before the Administrative Court in its legal texts. Therefore, the researcher recommends regulating the rules of appeal for these decisions and specifying a time limit for deciding on such cases.

Recommendations

1- The need to expedite the approval of the right to access information law due to its importance, in accordance with international standards and the recognized point of balance between activating the right to access information and considering public order, privacy, and other related considerations.

2- The importance of involving civil society in the approval of the right to access information law, in order to create an effective societal partnership, including working groups and broad discussion forums, to reach a common consensus that complies with international standards.

3- The need to integrate international agreements and standards into the right-to-access information law, especially after Palestine acceded to many international agreements, including the United Nations Convention against Corruption.

4- Establishing the right to access information at all levels of civilian and military official bodies, and creating information units in each ministry or official institution that includes a special information unit, both in paper and electronic format, preparing models for accessing information, and having a serious legislative policy to regulate the right to access information, including the objective and procedural framework of the law, as well as the tools for activating the law, including oversight, complaint and appeal mechanisms, and the system of crimes and punishments arising from the law.

5- Strengthening training and capacity-building for the teams working in information units, and creating an aware societal environment about this right.

6- Utilizing codes of conduct and enhancing their role in creating values and ethics that promote the exercise of the right to access information, and abolishing all texts that

restrict freedom of opinion and expression as they contradict freedom of information and the right to access information.

7- The need for official bodies and civil society institutions to highlight reports on the right to access information (official and alternative reports) to the committee concerned with human rights and the International Covenant on Civil and Political Rights related to freedom of opinion and expression.

8- Integrating marginalized groups such as women and people with disabilities into the structure of information units in official institutions.

9- Raising community awareness about the right to access information to promote its effective and efficient exercise, contributing to the creation of an honest and transparent system by activating community accountability mechanisms.

10- Strengthening the role of the Anti-Corruption Commission through its leading role in preventing corruption and its awareness tools to build an honest and transparent system and promote good governance.

11- Emphasizing the joints and axes of the law on the right to access information, so that this law does not include an unjustified restriction of the right, and ensuring the independence of the party responsible for applying the law and providing information (the Commissioner General of Information), as well as not making exceptions the rule, and not emptying the right of its content from Through unjustified and arbitrary restrictions in legislation, in line with international conventions and standards that guarantee and protect this basic right of access to information.

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